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Volume IX.] *March, 1894.* [*Number 1.*

POLITICAL SCIENCE QUARTERLY.

SOME IDEAS ON CONSTITUTIONAL REVISION IN NEW YORK.

THE recent election of delegates to a convention for the revision of the constitution of the State of New York, challenges attention to certain provisions in that instrument and naturally raises the question: What do the other state constitutions contain on these subjects? Without examination into the causes of the various provisions, a brief comparison is here made for the purpose of indicating the general tendency throughout the country.

I. *Revision and Amendment.*

When, in the year 1846, the people of the State of New York established their third and still existing constitution, they provided in express terms for a periodical as well as an occasional submission to themselves of the question, whether they desired a revision of their fundamental law. The formal authority for submission of amendments merely, they had already conferred on their legislature in the second state constitution, adopted in 1821, and they continued that authority in the present constitution of 1846. This authority is a very common and useful feature of state constitutions, and is lacking, in fact, in only three such instruments, namely, those of *New Hampshire* (1792),[1] *Maine* (1820) and Arkansas (1874).

The grant of authority to the legislature to submit, at their discretion, the question whether a convention should be called,

[1] Throughout this article, the states in Italics are those whose constitutional provisions are older than the present constitution of New York.

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is also quite common. This is a commendable method of securing an early expression of the popular will upon so important a matter, but in eighteen states there is no express delegation of the power: Arkansas (1874), *Connecticut* (1818), Indiana (1851), *Iowa* (1846, 1857), *Louisiana* (1845, 1852, 1864, 1868, 1879, though *contra* in 1812), Maryland (1867, though *contra* in 1864), *Massachusetts* (1780), Michigan (1850, *contra* in 1835), *Mississippi* (1817, 1832, 1868, 1890), *New Hampshire* (1784, 1792), *New Jersey* (1844), North Dakota (1889), Oregon (1857), *Pennsylvania* (1838, 1873), *Rhode Island* (1842), *Texas* (1845, 1868, 1876, though *contra* in 1866), *Vermont* (1777, 1786, 1793) and *Virginia* (1776, 1830, 1850, 1870).

This grant of authority to submit the question of calling a convention first appeared in the constitution of Delaware,[1] in the place of an impracticable scheme of legislative approval to every proposed change.[2] Since that time, the power has been conferred directly, but in permissive terms, in eight states: Colorado (1876), *Florida* (1838, 1865, 1868, 1885), Georgia (1877), *Kentucky* (1799, 1850, 1891), Missouri (1865, 1875), Montana (1889), NEW YORK (1846) and Tennessee (1870). In three states: Alabama (1865, 1867, 1875), *Delaware* (1792, 1831) and North Carolina (1876), the legislature is forbidden to call a convention without a prior submission of its expediency to popular vote. And finally, a positive direction to submit is the form used in fourteen constitutions: California (1849, 1879), Idaho (1889), *Illinois* (1818, 1848, 1870), Kansas (1858, 1859), Minnesota (1857), Nebraska (1875), Nevada (1864), Ohio (1851), South Carolina (1868), South Dakota (1889), West Virginia (1870, 1872), Washington (1889), Wisconsin (1848) and Wyoming (1890). That is, twenty-five states have express provisions on this subject, and of the remaining nineteen, Mississippi and North Dakota alone have constitutions adopted within the last decade. Texas, in 1866, and Maine,

[1] Adopted in convention, June 12, 1792, and contained in the present constitution of 1831.

[2] In the first constitution of 1776. See on this subject, Jameson, Constitutional Convention, sec. 219 *et seq.*, and the constitutions of Pennsylvania (1776), Georgia (1777), Vermont (1777), South Carolina (1778) and Vermont (1786, 1793).

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by an amendment adopted in 1876, entrusted the legislature with the dangerous power of calling a convention, a popular vote being involved merely in the choice of the delegates to serve in that convention ; but in the former state this authority was withheld in the subsequent constitutions of 1868 and 1876.

The fixing of a definite time at which the people should vote upon the expediency of revising their fundamental law, appeared as early as 1780, in the constitution of Massachusetts, where it was commanded that such an election should be held in the year 1795. The provision, being merely for a single election, expired by its own limitation. In 1784 the constitution of New Hampshire required the holding of an election for delegates to a convention at the expiration of seven years. The constitution of 1792 provided for such an election every seven years, and so the fundamental law of that state remains. In 1789 the constitution of Georgia ordered the election of delegates to consider changes in 1794, and the amendments of 1795 directed another such election in 1797. The constitution of 1798, however, omitted any further direction of this character. Such a provision appears to have been the natural result of the extremely strict provision in the first state constitution of 1777, which forbade amendments except on petitions from a majority of the voters in a majority of the counties, specifying the desired changes. The constitution of Kentucky in 1792 also called for a popular vote in the year 1797, and if affirmative, then a second vote the next year. The result was the constitution adopted in 1799, in which no further provision of the kind appeared.

The prescription of periodical elections on the question of revision, such as are required in New York by the constitution of 1846, appeared in the constitution of Indiana in 1816, which directed that a popular vote for or against the calling of a convention "to revise, amend or change the constitution," should be taken "every twelfth year." This provision was entirely omitted from the constitution of 1851, and disappeared from the fundamental law of that state. The Iowa constitution of 1846 contained a similar imperative direc-

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tion, the times fixed being the general election of 1870 and each tenth year thereafter. This provision was retained in the present constitution, adopted in 1857. The constitution of 1850 introduced this feature into Michigan, the times being the general election of 1866 and in each sixteen years thereafter. In Maryland the constitution of 1851 required decennial elections on the question of calling a convention, but in 1864 this provision was assimilated to that of New York by requiring a vote to be taken in 1882, and in each twentieth year thereafter. The time of the first election and the commencement of the twenty-year periods was changed in 1867 to the year 1887. The constitution of Ohio in 1851 provided in terms similar to those of New York for an election in the year 1871, and every twentieth year thereafter. This is still the fundamental law of that state. The constitution of Kansas in 1858 not only empowered the legislature to require a popular vote, but also directed the taking of such a vote in 1863 and in every tenth year thereafter; but the constitution of 1859, still in force, omitted the requirement. The constitution of 1870 substantially introduced into Virginia the twenty-year periods prescribed in New York, commencing with the general election of 1888.

Summarizing, we find that twelve states have, at some time, required a periodical submission of the expediency of calling a convention, and that seven of them still retain the provision.[1] The requirement does not, therefore, seem to meet with general favor, and when so many provisions are required in a modern constitution, it should not be retained without weighty reasons.

II. *Suffrage Qualifications.*

Next in importance to the method of changing the constitution may be ranked the qualifications of the voters who are to make those changes and participate in the elections for the various officers of the government. As the constitution of Wyoming (1889) is the only one which directly confers the

[1] The seven states are Iowa, Maryland, Michigan, *New Hampshire*, New York, Ohio and Virginia. Those who have rejected the provision are Georgia, Indiana, Kansas, Kentucky and *Massachusetts*.

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suffrage on women, it is probable that any such change in the constitution of New York would be submitted as a separate matter; such has been the course where the convention has been doubtful of popular approval. A gentle method of introducing woman suffrage is indicated by the Wisconsin constitution (1848), which authorizes the legislature to extend the right of suffrage by law to "persons" not enumerated in the constitution, provided such law be approved at a general election by a majority of all the votes cast. Under a similar clause of the Colorado constitution (1876), woman suffrage was established in that state at the general election of 1893.

When the people of New York, in 1846, extended the suffrage to every man "who shall have been a citizen for ten days and an inhabitant of this state one year next preceding an election," it may be assumed that they did not intend to afford opportunity for unwise, if not fraudulent naturalizations, with the demoralizing scenes repeated in and around their courts of justice prior to each election. They had had no such provision in the earlier constitutions of 1777 and 1821, and they did but fall in with a movement which has only recently attained its culmination, and which tends strongly to the degradation of American citizenship. There are thirteen states now where the suffrage is conferred upon the man who has but "legally declared his intention to become a citizen of the United States before he offers to vote,"[1] with commonly the further requirement of one year's residence in the state.

[1] Alabama (1875, though not in 1819 or 1865; first appeared in 1867 with a residence of six months only); Arkansas (1874, though not in 1836 or 1864, but first appeared in 1868 with a residence of six months only); Florida (1868 and 1885, though not in 1838 or 1865); Indiana (1851, with a residence of six months in the state and one year in the United States, though not in 1816); Kansas (1859, with a residence of six months in the state, though not in 1855 or 1857; in 1858 the provision appeared with the requirement that the declaration should be made ten days before election); Louisiana (1879, but not in 1812, 1845, 1852, 1864 or 1868); Minnesota (1857, after a residence in the United States of one year, and in the state of four months, and thus retained in the amendment of 1868); Missouri (1865, 1875, provided the intention has been declared not less than one nor more than five years); Nebraska (1866, with time of residence to be fixed by law, but in 1875 the declaration was required to be made thirty days before an election, and the residence to be six months in the state); North

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Where naturalization is required before foreign-born men can vote, no period of time prior to an election is fixed in North Carolina (1868, 1876)[1] and *Vermont* (amendment of 1828). Other states fix upon a longer period than the ten days' limit of New York: thus Pennsylvania requires one month (1873, but not in 1776, 1790 or 1838); California, ninety days (1879, though not in 1849);[2] Colorado, four months (1876);[3] but the majority of the states have no such express provision.[4] Undoubtedly the fundamental law ought to be explicit, and until uniformity is required by the constitution of the United States, the most satisfactory definition for a state like New York, at the great gateway of immigration, would probably be that no person shall be a qualified voter unless, for the period of one year prior to an election, he shall have been both a citizen of the United States and a resident of this state.

Dakota (1889, the declaration to be made not less than one nor more than six years previous to an election); South Dakota (1889, with a residence of one year in the United States and six months in the state); Texas (1868, 1876); and Wisconsin (1848). Except as mentioned, the residence in the state must be one year.

[1] This statement is made without regard to the registration period.

[2] In the Californian constitution of 1876 it was proposed to fix the period at one month, with six months' residence in the state.

[3] In Colorado the period of residence is six months.

[4] With the qualifications noted, the following states require simply citizenship of the United States: *Connecticut* (1818 and amendments); *Delaware* (1776, 1792, 1831); *Georgia* (1877, as also in 1777, 1789, 1798 and 1865; but in 1868 a person who had been naturalized or had legally declared his intention, might vote after a residence of six months only); Idaho (1889); *Illinois* (1870, as also in 1818 and 1848, with temporary provisions); *Iowa* (1857, as also in 1846); *Kentucky* (1891, as also in 1792, 1799 and 1850); *Maine* (1820); *Maryland* (1867, as also in 1776 and 1864; but in 1851, explicitly "every free male . . . being at the time of the election a citizen of the United States"); *Massachusetts* (1780); Michigan (amendment of 1870, but in 1835 and 1850 special provisions for "inhabitants"); *Mississippi* (1890, as well as 1817 and 1832; in 1868, naturalized citizens might vote after a residence of six months); Montana (1889); Nevada (1864, but with six months' residence); *New Hampshire* (1776, 1792, "every male inhabitant"); *New Jersey* (1776, 1844); Ohio (1851; "inhabitant" in 1802); Oregon (1857, with six months' residence); *Rhode Island* (1842); *South Carolina* (1790 and 1868; but in 1865 the suffrage was conferred upon "an emigrant from Europe who has declared his intention" and resided two years in the state); *Tennessee* (1870, though on six months' residence in 1796 and 1834); *Virginia* (1870, as in 1830, 1850 and 1864); West Virginia (1861 and 1872); Wyoming (1889); and Washington (1889).

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Registration, or the entry of the voter's name on an official list prior to an election, first appears as a necessary qualification for voting in the constitution of *Rhode Island* in 1842. It is still retained in that state by the amendment of 1888. The requirement appeared in the constitutions of Virginia in 1850 and Louisiana in 1852 (it is retained in the present constitutions of 1870 and 1879), but otherwise it was not imitated for nearly a quarter of a century,[1] when Maryland (1864 and 1867) and Nevada (1864) directed their legislatures to provide by law for the registration of the names of the voters. Then followed Missouri (1865, 1874 and 1875), South Carolina (1865 and 1868), Alabama (1867, 1875), Florida (1868, 1885), Georgia (1868, 1877), Mississippi (1868 and 1890), North Carolina (1868 and 1876), Indiana (amendment, 1881), Wisconsin (1882), Idaho (1882), Montana (1889), Washington (1889), Wyoming (1890) and Kentucky (1891): nineteen states in all, or a very respectable minority of the whole forty-four. Of course the number of states where registration is provided for by act of the legislature is larger. In those instances the registration is declared to be a lawful requirement upon the general principle that there must be some tribunal to decide whether or not a person offering to vote possesses the necessary qualifications. Such a tribunal must be guided by fixed rules and regulations, which it is in the legitimate province of the legislature to make, and which cannot be set aside by the judiciary, unless they constitute so arbitrary and unreasonable an exercise of the legislative power as to amount to a violation of the constitution. It would be a most obvious violation of the constitution to prescribe by law a qualification for voting in addition to those mentioned in the constitution itself; but short of that, it is easy to see that the legislature, by the prescription of burdensome details in the process of voting, may practically violate the constitution, without affording an opportunity for action by the courts. It is

[1] Kansas in 1859 required by art. v, sect. 4: "The legislature shall pass such laws as may be necessary for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established." In State *vs.* Butts (1884), 31 Kan. 537, Brewer, J. said that "this manifestly contemplates a registration prior to the day of election."

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altogether desirable, therefore, that an express provision either for or against registration be embodied in the fundamental law of the state.[1]

III. *Taxation and Sectarian Schools.*

If the people of the State of New York are unwilling to trust their legislature with the power of dividing the school taxes among various schools not entirely under the control of the state, it is clear that the present provisions of their constitution will be materially changed. Practically speaking, those provisions do not indicate any positive prohibition, probably from the fact that a division of the school taxes was not a burning question in 1846. This is a fair inference from the absence of any restrictions in the older and still existing constitutions of Connecticut (1818), Delaware (1831), Maine (1820), New Hampshire (1792), New Jersey (1844), Rhode Island (1842) and Vermont (1793). But assuming that a majority of the people of the different states are opposed to such a division of the school taxes, an examination discloses, nevertheless, that seven more recent constitutions contain no prohibition: Iowa (1857), Maryland (1867), Minnesota (1857), North Carolina (1876), Tennessee (1870), Virginia (1873) and West Virginia (1872). That is, fifteen states in all fail to prohibit in plain terms a division of the school taxes. It is apparently considered sufficient to prohibit a division of the school funds, from which a revenue is derived independently of taxation. Such a restriction is common in state constitutions, without regard to their provisions respecting the taxes.

The other twenty-nine states are clearly unwilling to trust their legislators with any power to divide the school taxes. Seventeen of the twenty-nine express their prohibitions in general terms,[2] confining the use of the taxes to the public

[1] Registration laws are forbidden in the constitutions of Arkansas (1874) and Texas (1876); see also West Virginia (1872) and Pennsylvania (1873).

[2] Arkansas (1874), California (1879), Florida (1885), Georgia (1877), Idaho (1889), Illinois (1870), Indiana (1851), Massachusetts (amendment, 1855), Michigan (1850), Mississippi (1890), Missouri (1875), Montana (1889), Oregon (1857), South Dakota (1889), Texas (1876), Wisconsin (1848) and Wyoming (1889). The pro-

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schools. But twenty-one of the twenty-nine, in addition to this restriction on the division of the revenue from taxes, distinctly forbid the appropriation of any other public property to sectarian purposes.[1] The terms of these prohibitions will be found to vary from those of Alabama (1875), Pennsylvania (1873)[2] and Arkansas (1874),[3] where, by the concurrence of two-thirds of all the members of each house of the legislature, appropriations may be made to educational or charitable institutions not under the control of the state, to those where the

visions in the other twelve states are as follows: Alabama (1875): "No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian or denominational school." Colorado (1876), see *infra*, p. 10, note 1. Kansas (1859): "No religious sect or sects shall ever control any part of the common school or university funds of the state." Kentucky (1891), see *infra*, p. 10, note 2. Louisiana (1879): "No funds raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian schools." Nebraska (1875): "No sectarian instruction shall be allowed in any school or institution supported in whole or in part by the public funds set apart for educational purposes." Nevada (1864): "No sectarian instruction shall be imparted or tolerated in any school or university that may be established under this constitution." North Dakota (1889): ". . . the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be . . . free from sectarian control. . . . No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school." These last words are the same as those in Pennsylvania (1873), art. x, sec. 2. Ohio (1851): "No religious or other sect or sects shall ever have any exclusive right to or control of any part of the school funds of this state." South Carolina (1868): ". . . No religious sect or sects shall have exclusive right to or control of any part of the school funds of the state, nor shall sectarian principles be taught in the public schools." Washington (1889): ". . . the state tax for common schools shall be exclusively applied to the support of the common schools. . . . All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence."

[1] The states which do not distinctly prohibit appropriations to sectarian purposes are those already mentioned as not prohibiting appropriations of the school taxes to sectarian education, together with the following eight states: Indiana (1851), Kansas (1859), Massachusetts (1850), Nebraska (1875), Nevada (1864), Ohio (1851), South Carolina (1868) and Wisconsin (1848).

[2] Art. iii, sec. 17; but by sec. 18 "No appropriations . . . shall be made . . . to any denominational or sectarian institution, corporation or association." And by sec. 19 "The general assembly may make appropriations of money for institutions wherein . . . the orphans of soldiers are maintained and educated; but such appropriations shall be applied exclusively to the support of such orphans."

[3] In general terms.

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power is withheld in absolute and unmistakable terms. A good type of the extremest form is that of Missouri (1875):

No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof as such. [Art. II, sec. 7.]

Neither the general assembly, nor any county, city, town, township, school district or other municipal corporation shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose; or to help to support or sustain any private or public school, academy, seminary, college, university or other institution of learning, controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any county, city, town or other municipal corporation, for any religious creed, church or sectarian purpose whatever.[1] [Art. XI, sec. 11.]

The more moderate form of expression is used in the constitution of Georgia (1877):

No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religionists, or of any sectarian institution.[2] [Art. I, sec. 1, par. 14.]

Somewhat stronger terms are employed by Louisiana (1879):

No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, . . . nor shall any appropriations be made for private, charitable or benevolent purposes to any person or community, . . . [Art. 51.] The taxing power shall be exercised only . . . to educate the children of the state, . . . [Art. 204.][3]

[1] This latter section is almost literally the same as art. viii, sec. 3, constitution of Illinois (1870). These two prohibitions were followed by Colorado (1876), though the first prohibition was expressed in more apt terms in these words (art. v, sec. 34): "No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association." California (1879), Idaho (1889) and Montana (1889) in this respect follow the language used by Colorado.

[2] Michigan (1850) is similar, as are also the constitutions of Oregon (1857), Texas (1876), Florida (1885), Washington (1889) and Kentucky (1891).

[3] This last article applies to all state, parish, district and municipal taxation, by art. 218. This constitution is particularly commendable as cutting off not only the religious but also the scientific private schools; in fact confining the use of the

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Only two of the twenty-one states refer specifically to sectarian schools in their prohibitory clauses.[1]

The constitution of North Dakota (1889)[2] has a sweeping provision which cuts off appropriations for every private educational institution, whether religious instruction is given or not. Some such impartial provision can alone be fair and just. And the facts disclosed by the examination just made of the various state constitutions, make it evident that if the subject of appropriations for educational purposes is not to be left to the fluctuating discretion of the legislature, such appropriations must be regulated in positive and even diffuse terms, that there may be no possibility of error in reading the fundamental law.

From the consideration of these few though vital topics, it is apparent that the general revision of the constitution of the Empire State assumes an almost national importance. It is not merely the registry of general progress in the country for the half century since the constitution of 1846 became the fundamental law of the state; for there have been changes made from time to time in the text, and even efforts made to remove some great principles, like that of an elective judiciary. The proper construction of an instrument to conform to the general tendency among the states of the Union, to all of which the Empire State is joined by the ties of commerce as well as of patriotism, can only be made upon the newer lines of positive and distinct enactments, in orderly arrangement of the context.

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public moneys to the public institutions. The constitution of Wyoming (1889), however, uses more expressive language, in declaring that "No appropriation shall be made for . . . educational . . . purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association." Art. iii, sec. 36.

[1] Mississippi (1890): ". . . nor shall any funds be appropriated towards the support of any sectarian school; or to any school that, at the time of receiving such appropriation, is not conducted as a free school." South Dakota (1889): "No appropriation of lands, money or other property or credits to aid any sectarian school shall ever be made by the state or any county or municipality within the state, . . ."

[2] Art. xii, sec. 185.

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THE BANKS AND THE PANIC OF 1893.

IN considering the relations of American banking to the panic of 1893, the first and most serious question is, how far, if at all, defective bank management was responsible for the collapse. History has ascribed two of our greater panics — those of 1837 and 1857 — largely to reckless banking. But the banking system itself, its regulation by the state and the spirit in which the system is administered have undergone great and salutary changes since those days. It is the popular belief that the "wild-cat" bank-notes, ill-secured and over-issued, were in these earlier panics the sole cause of mischief. This, however, is not strictly true; and a study of the facts will show that despite the careful restrictions of the present system, enough factors of danger still remained in 1893 to make the whole business community vulnerable. Circulating notes are not the only or the easiest means by which the banks may bring about business inflation. Deposits inscribed on the books of banks, like bank-notes in circulation, represent credit entrusted to the banks by outside capital. In both cases the credit fund is absorbed in loans or other bank investments; in both the bank pledges return in actual money on demand. Excessive and unsecured bank-note issues were indeed a peculiarly vicious form of bank inflation, in that they cheated the poor and ignorant, who accepted the notes only because the notes to them were money, and who never consciously took their chances with an institution's solvency. But otherwise over-expansion, always through excessive encouragement of loans, has in each case substantially the same result. Bank-notes, the total issue of which had for years been contracting, and the security of which is now perfect, were not a factor in last summer's panic. But the volume of the bank-deposit fund, no less than the security maintained for its redemption, is a matter for investigation.

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As regards this fund, a remarkable change in bank conditions has taken place during the last two decades. Comptroller Hepburn said, in his report of 1892 :

In the sixties banks did business on their capital; supplied the wants of customers and earned their dividends with the money which shareholders subscribed. Now capital is made just sufficient to command public confidence. Usually a large surplus is accumulated, but the business is done upon depositors' money.

The general truth of this criticism may be made apparent by a comparison of the figures. Bank capital has indeed increased heavily in the last two or three decades; but the increase in the bank-deposit fund has far outstripped it. In 1870 the combined account of national bank capital, surplus and undivided profits was 37 per cent of total liabilities. In 1879 this percentage was 33; at the close of 1892 it had fallen to 29. In 1870 the individual deposits alone made up only one-third of the total liability account; in 1879 they constituted 39 per cent; in 1892 they were more than half.[1] The national banks' own funds exceeded individual deposits in 1870; in 1892 their proportion to such deposits was less than 58 per cent. Such compilations as have been made of the state bank balance-sheets show that the contrast there between the two banking epochs is even more remarkable.[2]

Now it is perfectly true that this change in banking methods came in response to a genuine and extraordinary development of the country's industrial resources. It is true, also, that this expansion in bank deposits arose in the main from the immense inflow of home and foreign capital into American investments,

[1] The figures at these three dates were as follows :

	1892.	1879.	1870.
Capital, *etc.*	$1,044,233,834	$617,501,367	$576,118,173
Individual deposits	1,764,456,177	755,459,966	507,368,619
Total liabilities . .	3,480,349,667	1,925,229,617	1,538,998,106

[2] Returns compiled by the comptroller's office at Washington show percentage of state bank capital, surplus, *etc.*, to total liabilities to have been 40 in 1879 and 32 in 1892. Proportion of the same to individual deposits was 75½ in 1879 and 50 in 1892. This is not, however, a complete exhibit, since only 616 state banks were accounted for in 1879, and by no means all in 1892. As late as this year, ten states and two territories had no organized banking department, and made no returns.

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especially since the specie resumption of 1879. Nevertheless, it will hardly be denied that so vast and disproportionate an extension of the purely credit element in banking could not fail, except under most experienced guidance, to relax the principles of conservative bank financiering, and at the same time necessarily to increase business risk. The general principle of trade, that the smaller the capital relative to the total obligations, the greater the chances of disaster, certainly does not fail of application here. Borrowers, indeed, in other lines of industry, whose credit obligations are chiefly placed on time, have at least a breathing-space in a period of panic. The bank, whose liabilities, outside of its own funds, are practically all demand, has not even this advantage. Even "quick assets," such as may be resorted to for sudden liquidation of liabilities, are but a small proportion of the total bank resources, and in the Western banks are insignificant.[1]

There is, of course, one highly important safeguard in the banking business, which most other credit enterprises lack. The national bank law and the state laws, wherever proper state bank legislation has been effected, strive to reduce the risk by stringent requirements of a percentage cash reserve against deposits. It is true that in our country this minimum requirement is low. Nevertheless, it is conceivable that under certain conditions even such light restrictions would ensure not only safety to depositors, but conservatism in the banks' own attitude towards borrowers. These conditions are, a properly regulated national currency and a *bona-fide* maintenance of bank reserves — not, as our present laws permit, a reserve of which a three-fifths part, in the most vulnerable bank communities, may be shipped away for deposit in a distant city. Had these two conditions ruled in our recent financial history,

[1] The surest "quick asset" is, of course, a demand loan on first-class collateral. At the close of 1892, out of the $2,153,498,829 national bank loans reported to the comptroller, only $369,248,604, or less than eighteen per cent, were placed on demand. Of these, moreover, only $273,328,289 were secured by collateral. In New York city alone, where the total of loans was $344,199,941, demand loans on stock or other collateral were $117,751,227, or sixty-five per cent of the country's total.

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recklessness or dishonesty in banking might indeed have come to light, some dangerous stimulation of the speculative spirit might have been witnessed, with resulting losses and reaction; but such a tearing down of the whole financial structure as was seen last summer would have been perfectly impossible.

Unfortunately, the currency policy of the United States government has always been such as completely to prevent the application of any such general check. The coinage of over-valued silver dollars since 1878, and the issue of Treasury notes on silver bullion since 1890, have actually increased the country's silver and paper circulation, between 1879 and 1894, by seventy-five per cent. Not a dollar of this new currency was available for exchanges in foreign trade. Hence, it heaped up at all times in the city bank reserves, and in dull years lay idle even in the reserves of country institutions. As a result, the cash reserve requirement, as a check on reckless trade inflation, became almost wholly nugatory. A borrower of doubtful credit or with questionable collateral will always offer tempting rates, but he is not a serious menace to the general system when the legitimate demand is heavy, or when the loanable funds in bank are low. Under our clumsy laws, the currency supply, and hence the actual money fund in bank, are often largest when demand from trustworthy borrowers is least. In active times these conditions force unhealthy and violent extremes; in dull times they offer a premium on bad loans, such as figured in shocking quantities in the bankrupt asset lists of 1893.

It was on the Western banks that the shock of panic fell in 1893 with greatest violence. The records of no previous panic show in this regard such impressive sectional contrasts. The list of national and state bank failures for 1893 shows for the New England and Middle Atlantic states seventeen suspensions, with total estimated liabilities of $13,138,073. This list includes such financial centres as New York, Boston and Philadelphia. On the other hand, the failures of similar institutions in the five states of Ohio, Indiana, Illinois, Michigan and Wisconsin numbered forty-nine, with aggregate

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liabilities of $23,163,537. In the eleven granger and Rocky Mountain states, still further to the west, the state and national bank failures reached the yet more disproportionate number of 147, and reported liabilities footed up no less than $24,781,181.[1] Taking the country as a whole, the record shows that out of 360 national and state banks suspended during 1893, with liabilities of $109,547,556, no less than 343 failures, with liabilities of $96,409,483, occurred in sections of the Union west or south of Pennsylvania. The failures of private banks and savings institutions were distributed in almost exactly the same proportion.[2]

For this remarkable disparity there were several reasons. Rapid development on other than local capital had been the chief feature of the West's recent career, and this was a double element of weakness. The collapse of the "land booms" in 1889 and 1890 had served as a wholesome check to speculation, but the two enormous grain harvests of 1891 and 1892 had again revived it. The warnings of 1890 and of the brief succeeding period fell in that section on deaf ears. The evils of a vicious currency took root for this reason far more extensively west of the Ohio. "Bad loans" made up a startlingly large proportion of the assets of bankrupt institutions. The East, on the other hand, where foreign capital was concentrated, felt much more severely the shock and the significance of the London crash of 1890. When, in 1891, the expulsion of gold by our accumulated paper currency began, it was the Eastern banks from whose vaults the gold was first withdrawn to meet such export requirements. It was through these banks that the "run" began, with 1893, on the government's gold reserve for the redemption of legal tender notes. It was on the Eastern stock exchanges that foreign investors poured for two years continuously their holdings of American securities. These multiplied signs of coming trouble were not ignored. The Eastern institutions were indeed subjected to the same demor-

[1] Figures compiled and published by Dun's Mercantile Agency.

[2] Total failures of such institutions in 1893 were 250; liabilities, $41,895,346. Outside of the New England and Middle Atlantic states failures were 224; liabilities, $35,543,801.

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alizing pressure from currency over-issues, and they furnished their share of reckless ventures and dishonest speculation. But the weeding out of such concerns was very thorough in 1890 and in the ensuing year or two, and, as a rule, the policy of the Eastern city banks on the eve of the general breakdown was sound and conservative.[1]

But all this relative conservatism in the Eastern banks failed to offset the results of a thoroughly dangerous practice embodied in our banking system. This is the carrying and loaning out, in city banks, of interior banks' legal reserves. This account, which Professor Amasa Walker aptly described as the most "explosive" element in American banking, arises from the larger opportunity offered in great financial centres for the steady use of capital. At nearly all times Western banks are glad to get the two per cent allowed for use of their deposits by Eastern institutions. The national bank law, moreover, permits the so-called "country banks" to deposit with other banks in certain specified cities three-fifths of their fifteen per cent cash reserve. Since the country banks can at no time legally lend out this last-named fund, it is kept, as might be supposed, perpetually on deposit with the reserve city institutions. In recent years this trust fund has reached phenomenal proportions. At the close of 1892, the national banks reported "due from approved reserve agents" the sum of $204,948,159. The total amount due from other banks was more than double this. In May of 1892 the New York City banks alone held $293,078,195 subject to call from other institutions. Let it be noted not only that this fund was money belonging to private depositors in other banks, and subject to their instant call, but that a large proportion of it was the very money prescribed by law to be held for the purpose of meeting "runs" by the Western banks' own creditors.

[1] The truth of this was illustrated when New York's bubble of speculation in the "industrial stocks" broke in May. This group of stocks fell on the average twenty-five points within a week, and some of them forty or fifty, but no bank suffered. This was, moreover, before the issue of loan certificates. As a matter of fact, the banks had long been notoriously shy of these securities.

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This will explain the violence of the strain on city banks when the country institutions all at once took fright.

Nor were the bad results of the system by any means confined to cities whence interior deposits were withdrawn. The city depositories kept on hand by law a cash reserve of twenty-five per cent. The country banks held in their vaults only the insignificant reserve of six per cent. Grant, what was generally true, that the city banks were conservative in their use of deposited interior reserves, and invested them as a rule in demand loans on stock or bond collateral. A bank in Iowa or Colorado, with its three-fifths reserve deposited in New York City, may easily enough, when panic threatens, telegraph an immediate call for the return of such deposits. But actual money, even if ready for delivery, cannot be shipped from New York to Denver in a day, and forty-eight hours' delay may easily settle the fate of the Western institution. This is the reason why so many banks throughout the West suspended in last summer's crisis, when they were perfectly solvent on their books, and indeed resumed payments in a few days' time — as soon, in fact, as the money shipped from their reserve depository reached them.[1] The whole practice, in a country of such vast distances as ours, is full of continual possibilities of mischief. Whether or not a serviceable reserve-deposit plan with better safeguards could be devised, I shall not here discuss. But it is worth our while to note that the Bank of England, the most conspicuous of all depositories of tributary bank funds, carries in its entire deposit liabilities a less amount than our Eastern banks hold from deposits of interior reserves alone. In England delay in transferring currency against withdrawals by interior banks reaches a minimum. Yet the Bank of England habitually

[1] The comptroller reports that out of the total of 158 national bank failures, with a capital stock of $30,350,000, eighty-six, with a capital of $18,205,000, resumed business within a short time. None of the five banks which suspended in the New England and Middle States resumed payment. Of the six national banks which suspended in Iowa, all but one subsequently resumed. Sixteen national banks suspended in Colorado, of which all but two resumed, and six respectively in Oregon and California, of which in each case all but two resumed.

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holds against its total deposits a cash reserve of forty to forty-five per cent, and even now Mr. Walter Bagehot's argument is being repeated by a score of excited London critics, that the Bank, as depository for other institutions, is in the nature of a public trustee, whose directors must content themselves wholly with ultra-conservative investments and with profits below the average.

The facts undoubtedly make it hard to say exactly how far the banks as a whole were culpable in this inflation process, or how far they were themselves victims of outside circumstances. Both conclusions will be found in many cases correct. When we discuss, however, the conduct and policy of the banks after the panic of 1893 had actually begun, we stand on firmer ground. Every banking institution has its own peculiar responsibility placed upon it in time of panic, but the gravest responsibility by far rests on the great city depositories. In 1857, in 1861 and in 1873, the banks of the leading Eastern cities were the first to set an example of general suspension. With one noteworthy exception — the maintenance of payments by the Chicago banks in 1873 — the panic record of our city banks, up to the last ten years, is a discreditable chapter of nerveless fright and easy surrender. It is, therefore, a gratifying fact to recognize, that though the violence of panic shock in 1893 was greater than in any preceding year, no general bank suspension followed, and in the Eastern cities no suspension whatever except as a result of actual insolvency.

Nor is this all that can be said in praise. The reserve cities furnished throughout the crisis a memorable exposition of the principles of sound panic banking. The time-honored rule, established by the "Bullion Report" to Parliament in 1810, that in time of panic banks should discount freely and fearlessly for all solvent customers, was observed in a remarkable degree. In New York City, in ordinary times, the loan account often falls far below the deposit total;[1] it rarely exceeds it.

[1] In the first week of 1893, New York clearing-house bank loans were $441,283,700; deposits $455,367,800. In the last week of 1893, loans were $417,606,900; deposits $506,437,800.

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Between June 4, 1893, the week when panic may be said fairly to have begun, and August 5, which may be called the height of actual panic, deposits in the sixty-four New York clearing-house banks decreased $58,466,000, and actual specie and legal tender holdings $49,621,800. This was a terribly sudden and violent impairment of reserves, the actual money decrease being thirty-eight per cent. Yet in the face of it, outstanding loans were contracted only $7,972,700. This remarkable maintenance of bank accommodation to borrowers, in the face of monetary crisis, was made possible by two distinct and wise measures of policy. The first was a firm and continuous curtailment of outstanding loans before the panic's actual outbreak.[1] This was to strengthen cash resources and reduce pressing liabilities. The second measure was the adoption, when once real panic had begun, of a policy almost exactly opposite.[2] This was the issue of clearing-house certificates, in order to maintain the loan account.

I shall not enter into a lengthy discussion of this financial contrivance. It is enough to say that the loan certificates are a purely American invention, and that their safe and satisfactory operation in four severe financial crises[3] has won for the

[1] Between the first week of April and the first week of June, loans were reduced in New York $16,834,300, although in the same time the total cash reserve increased $8,304,700, and the surplus reserve over the required twenty-five per cent of net deposits $10,324,425.

[2] The banks followed another thoroughly sound principle in lending only at high rates; the sufficient reason being that a high rate is a matter of no concern to a borrower in real extremity, while a low rate is a temptation to unscrupulous borrowers to engage the money and then relend it at a rate fixed by the needs of others. The banks were therefore entirely right in lending at one-eighth per cent and interest, or fifty-one per cent, yearly, the five millions later obtained through loan certificates and released in preparation for gold imports. An effort then to "break" the money market by offers at a low rate would have had extremely bad results. So, in the ensuing week, the action of the New York banks in raising the rate for interior re-discounts to twelve per cent was fully justified. Both actions have ample precedent in the skillful financiering of the Bank of England during the Baring crisis of November, 1890.

[3] They were issued in 1873, in 1884, in 1890 and in 1893. In 1873 New York issued $26,565,000, and Philadelphia $6,785,000. In 1884 New York alone issued certificates, the maximum being $24,915,000. In 1890 New York issued $15,205,000, Philadelphia $8,870,000, and Boston $5,065,000. In 1893 New York issued $38,280,000, Boston $11,445,000, Philadelphia $10,965,000, Baltimore

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system the approval of practically all competent judges. They are, as is generally known, a species of currency issued by a clearing-house committee to all banks in the association applying for such accommodation and furnishing approved and sufficient collateral. These certificates are by agreement accepted in payment of balances between banks of the clearing house. They cannot, of course, circulate outside the limits of this clearing house; and an annual interest rate of six per cent, charged up daily against the bank in whose name such certificates are outstanding, insures their early redemption when the money market is restored to equilibrium.

Through the use of this ingenious emergency-device last summer, solvent borrowers were protected by the courageous advance of banking credits at the very worst hour of panic. Nor were the system's benefits extended to individual borrowers alone. Not only did the interior banks, at the panic outbreak, call in from city institutions a great part of their own deposited reserves, but they were clamorous for "re-discounts"; in other words, for the purchase from them for cash of paper already discounted for their own customers. To this demand, too, which came with no impropriety from heavy depositors, the larger banks responded. The total of notes and bills re-discounted for other institutions rose from $14,021,596 in March to $18,953,306 in May, and to $29,940,438 in July, the height of the summer's panic. In 1873, during a corresponding panic period, the account increased only from $5,403,043 to $5,987,512.

The clearing houses of four other cities followed New York's example in the issue of loan certificates. Chicago, however, where a strong local prejudice exists against the plan, refused to follow. In the worst of the August panic, a resolution authorizing such issues was indeed adopted by the Chicago

$1,475,000, and Pittsburg $987,000. The average time between the first issue and final cancellation of the certificates is about four months. The real origin of the plan was in the action of the New York clearing house in 1857, when certificates of credit were issued through the Metropolitan Bank to state banks which could not redeem their notes; the notes being deposited as security against the certificates.

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clearing house, but no bank availed itself of the opportunity. The result was exactly what might have been foreseen. In the Eastern cities the use of loan certificates so far offset the violent shrinkage in reserves, that between May 4 and July 12 the loan account of the New York national banks actually increased; the loans of Philadelphia were cut down only two per cent, and those of Boston only four per cent. But Chicago, lacking the emergency provision of the Eastern clearing houses, was forced to reduce its loans no less than fifteen per cent.[1] In a city where local enterprises were already inflated by speculation incident to the World's Fair, the result of this contraction was a collapse more violent than that of any other large commercial centre.

Another highly important outcome of the loan-certificate issues deserves discussion. In a panic caused or intensified by the actual hiding away of money, the most obvious measure of relief might seem to be the raising of loans in other countries, and the importation thence of gold to make good impaired reserves. This operation, however, is not as simple as it looks. Foreign capitalists are rarely disposed to lend in a nation or city where the whole financial structure is shaking. If indeed they could be induced to buy securities or commod-

[1] The following figures, taken from the national bank reports as compiled by the comptroller, illustrate the changes:

	NEW YORK.		BOSTON.	
	May 4.	*July 12.*	*May 4.*	*July 12.*
Loans	$307,372,243	$308,646,935	$142,975,348	$137,484,412
Specie and legal tender	98,086,692	76,719,353	14,384,581	12,869,552
Individual deposits	286,985,310	246,736,851	98,125,482	89,711,636
Due other banks	168,483,706	155,507,227	37,713,052	36,956,918
	PHILADELPHIA.		CHICAGO.	
	May 4.	*July 12.*	*May 4.*	*July 12.*
Loans	$96,655,813	$94,515,532	$96,824,857	$82,420,381
Specie and legal tender	20,533,549	17,238,715	29,273,025	24,862,382
Individual deposits	95,489,471	89,042,095	75,781,074	66,433,367
Due other banks	22,791,614	22,241,136	48,856,591	36,931,031

The contraction of loans in Chicago was far more violent later in July and in August, dates not covered by the national reports. The Chicago banks themselves publish no statements except when called for by government authorities.

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ities in amounts exceptionally large, gold would be normally due in payment. But the trouble is, that foreigners, like all other sagacious speculators, are likely to wait until they are sure that prices have "touched bottom"; which usually means that they will wait until too late for timely relief. There have, indeed, been gold importations in panic years. As long ago as 1838, foreign merchants and bankers in New York borrowed £1,000,000 gold from the Bank of England, to repair the shattered local bank-reserves. The London bank itself, in the same year, relieved a similar distress in London by a loan of £2,500,000 from the Bank of France. More than half a century later, in November, 1890, the Bank of England averted panic by a series of operations, all of which hinged on the importation of £5,000,000 gold borrowed from the banks of France and Russia. In this memorable episode, the gold shipment was so distinctively an operation in the loan market that within six months the Bank of France received back its gold in the very receptacles in which it had been conveyed to London.[1]

Of all these importations, however, only one — that of the English bank in 1890 — was made early enough to forestall, through restoration of public confidence, the worst mischief of panic. Yet in every serious money panic — including that of 1873, when specie imports were at no time a factor of real significance — foreign exchange rates have fallen and remained materially below the normal gold-importing point. The reason for this is obvious. The blocking of the American money market equally blocks the market for sterling bills. In their eagerness to raise funds for pressing needs, exporters of

[1] It is not, perhaps, generally known that the £3,000,000 gold loan of November, 1890, from the Bank of France, was secured by the deposit of short-dated British Treasury bonds; these bonds having been furnished the Bank of England by Mr. Goschen, then chancellor of the exchequer, in temporary exchange for national debt stock. This was to comply with certain business rules of the Bank of France. Paris exchange on London rose a week before this transaction to 25 f. 40 c., eight centimes above the gold-exporting point. The cost in charges of the entire £5,000,000 continental gold importation was £100,000, besides interest. Before this negotiation was closed, the government offered Mr. Lidderdale, governor of the Bank of England, the option of a suspension of the Bank Act of 1844. The offer was wisely declined.

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merchandise offer their bills at any sacrifice, but find no market, because the mercantile importers, who ordinarily furnish the demand, cannot now raise the money to pay for their remittances. At times (as in 1873) this pressure of unmarketable bills weighs down sterling quotations to a level absurd and almost senseless; yet the market continues blocked. This was the case in 1893, up to the last week of July. Until the July panic reached its crisis, nobody seems to have thought of clearing-house loan certificates as a means of breaking the sterling dead-lock. It was indeed argued, even by members of the clearing-house committee, that gold imports ought not to be "forced." This is a sound enough principle, though it is rather hard to understand how such exports could be "forced" at any time, except by the counter-sale of something else at a sacrifice. But however that may be, the sudden contraction of our currency, through the money hoarding, had completely upset such rules, both practically and theoretically. What was needed was instant relief from panic. Purchase of foreign gold would accomplish this, and would do it while merely hastening shipments which could be paid for later either by the return of the borrowed gold (as in the Bank of England's operation of 1890), or by repayment in securities and produce (as was the case with us later in 1893).

Our bank presidents seem to have been at first in doubt as to the practicability of this expedient. By such delay three weeks at least of precious time were lost.[1] At length, in the week beginning July 24, when the Erie Railroad failed, the Milwaukee Bank closed its doors, and panic became such that the stock-exchange governors were discussing the shutting up of the exchange, the matter came to a head. Three bank presidents of New York City appealed to the head of a prominent gold-shipping house, to know if it was not possible to buy gold in London and import it. The answer was: "Furnish the credits here in New York and you shall have the gold." The requisite credits were instantly obtained through a heavy

[1] Rates for demand sterling bills sold below the normal gold-importing point before the close of June, and during July did not rise above it.

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issue of clearing-house loan certificates, and within twelve hours upwards of $5,000,000 gold had been obtained in London.[1] This simple operation proved, as it had proved three years before in London, to be the turning-point of panic. The stock market rose rapidly, and never subsequently fell into demoralization. But too much mischief had been done already to restore financial equilibrium in a day, or by a single importation. So extreme, indeed, was the need for actual money, especially in the Western States, that this discovery of the sterling market's possibilities started a buying movement in exchange sudden and violent enough to drive the rates, within a week, actually above the normal gold-exporting point. Even this did not for an instant check the import movement. In August and September $48,000,000 gold came in from Europe; and though the enormous sales of stocks and wheat to foreigners later depressed the sterling market, over $10,000,000 gold was ordered in London while rates were quoted here above the export level. The importance of this precedent, with a view to possible future emergencies, can hardly be overestimated.[2]

It has been said already that there was no bank suspension in the reserve cities during 1893, except where the strain of panic forced public insolvency. This statement needs, however, one important qualification, involving discussion of a very delicate and unpleasant question. It will be remembered by those who watched the course of panic financiering, that accusations were freely made, as early as July, that banks were refusing cash payments to large depositors. At first the

[1] So simple was this operation, that the gold practically cost the banks nothing beyond the six per cent interest paid on the loan certificates. The firm of Lazard Frères charged the bankers, as commission, only three per cent for five days.

[2] I have not mentioned the taking out of new bank-note circulation, because this was not a prominent factor in the real relief of the money market, and because it is not likely to remain a possible emergency factor. The city banks were, however, extraordinarily slow in making use of this obvious and, under the existing law, perfectly proper means of relief. Between July 1 and October 1 the national banks as a whole took out $24,977,637 new circulation; of which increase approximately $9,000,000 was issued to the banks of New York City. Of this $9,000,000 the greater part was not issued till after September 1st, a fact for which the delay in printing notes at Washington only partly accounts.

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country banks were charged with refusing to remit their cash collections.[1] Banks in some larger cities were next accused of withholding similar remittances. At length it was alleged, in the daily press and on the floor of the United States Senate,[2] that New York City banks were refusing to redeem checks of their own depositors in legal tender money. This accusation was made with bitterness, and it was not denied. The popular sentiment was, however, strongly against the proposed senatorial investigation. No bank depositor to whom cash payment was refused ever gave public utterance to complaint. No legal process was invoked. The newspaper critics soon found their attack on the banks impolitic. The Senate resolution for an inquiry was referred to the finance committee, where it was smothered, as it ought to have been and every one knew it would be, and there can be no doubt that its advocates paid the penalty of their aggressiveness in a considerable loss of popularity. Thus far, then, it might be argued that public opinion sustained the action of the banks in question.

From an economic standpoint, however, this by no means ends the matter. That some of the New York clearing-house banks did thus suspend cash payments, is a matter of public knowledge. No formal or concerted action, indeed, was taken by the banks; the clearing house ignored the whole performance; the majority of New York institutions continued to pay cash on demand to all depositors, and those which did refuse cash payments not only offered to such depositors checks on

[1] Some novel and curious incidents arose in this connection. The express companies did a very large business, during the panic, in presenting out-of-town checks at the banks on which they were drawn, and bringing the money to the city bank whence the check was remitted. The out-of-town banks frequently resisted this by paying in silver dollars or fractional coin. Domestic exchange between two great Eastern cities was at one time fixed by the express charges for transporting silver dollars. On August 30, Chicago exchange on New York sold at three dollars premium per $1,000.

[2] In the debate on Senator Peffer's resolution of August 22, instructing the comptroller of the currency to inform the Senate whether certain New York banks were or were not violating the National Bank Act by refusing cash to depositors, and by charging exorbitant discount rates. The resolution was advocated by Senator Hill, and opposed by Senators Hoar, Gorman, Hawley and others.

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other banks,[1] but cashed small checks without inquiry, and larger checks when the need was shown to be imperative. This was undoubtedly a vast improvement over the general shutting-down of 1873. Nevertheless it was suspension, its effect on business and credit was mischievous in the extreme, and it can be justified only on the plea of absolute necessity.

This plea, in my opinion and in the judgment, I believe, of the soundest clearing-house authorities, is quite untenable. The issue of loan certificates was a recourse still open to every solvent bank, and the banks which did shut down on cash payment to depositors included several of the soundest institutions in the city. July's shipments of currency, to meet deposit withdrawals of interior banks and other institutions, were indeed extremely heavy, but on August 5 there was still left in the New York clearing-house bank-reserves $79,218,500 specie and legal tenders. Moreover, at the very time when banks resorted to such partial suspension, importation of gold from Europe had begun. Any bank with securities on which to take out loan certificates was able, within seven days, to replace such certificates in American gold coin.[2]

But the plea of necessity was not the bankers' only plea. It was openly argued that the restriction on cash payments had positively good results, in that it stopped withdrawals by money hoarders. Let us observe what were the actual results of this restriction. It was followed by a market phenomenon unfamiliar to the present generation. Currency, as the phrase was, went to a premium. Two or three active Wall Street money brokers at once inserted newspaper advertisements offering a premium for gold or silver coin, or for paper legal tender currency. This premium was at first one and one-half

[1] Most of these banks sent to their customers rubber stamps marked "payable through the clearing house." This was to be stamped on checks when drawn, by way of a polite and euphemistic hint to receivers of the checks that the bank declined to pay cash.

[2] Owing to the foolish action of our Treasury Department in March, 1891, based on an equally foolish Congressional amendment offered by Senator Sherman, a charge of forty cents per $1,000 had been imposed on gold bars taken for export. As a result, most of the $155,000,000 net gold exports from the United States since that time were of American coin.

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and two per cent; it rose once to four per cent. In quick response to these advertisements, the hoarded money of New York and its vicinity poured into the Wall Street offices. The brokers paid for this currency, in turn, by certified checks on their own bankers. They sold the currency at an average advance of one-half of one per cent. Two classes of buyers chiefly furnished the demand. First, and most naturally, there were employers of labor with large weekly or monthly pay-rolls, whose deposits lay in banks which flatly refused to pay them cash for checks. Second, and more numerous than might have been supposed, there were banks which were unwilling to refuse cash payments, but which were not averse to paying a premium to replenish their cash reserves.

The first of these transactions makes the operation easy of analysis. Currency, it is said in common phrase, was bought with checks. But this statement involves an absurdity; for nothing had happened to alter the value of the currency. The actual transaction was a sale of bank checks for money. Something had very obviously happened to make the checks less valuable than they had been before. At the bank on which they were drawn these checks were now worthless for the one purpose for which their makers drew them — conversion into coin and bills of small denomination. They were sold in Wall Street, therefore, for what they would bring in cash. Like irredeemable paper currency, their percentage of depreciation — in other words, the premium on the kind of money needed — was measured by the ratio of supply and demand, and by the probability of their ultimate cash redemption. The supply of such checks offered last year in exchange for currency was large. But on the other hand early resumption of full cash payment by the banks was universally expected, and the checks themselves, still being good for all banking transactions and exchanges through the New York clearing house, were as good as cash for the most of ordinary purposes. Therefore, the "premium" on currency never rose exorbitantly high.

But did this operation check individual hoarding of money? Obviously not. Withdrawal of funds from banks which refused

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cash payments ceased of course; but withdrawals from other banks were doubled. The logic of the bank restriction, therefore, pointed, if sound, to nothing short of general suspension. Nor was this all. A large part of the regular and individual bank depositors of money were driven away at once. The chances that a man with $100 currency will deposit it in bank, when the bank announces that it will not return the money on demand, and when the currency may be "sold" for $102 in Wall Street, are certainly small. The argument that the banks were forced to refuse cash payment, *because* of the premium in Wall Street, utterly confuses cause and effect. Of course, after the premium was offered, there was a chance that a depositor would withdraw his $100, sell it for $102 in Wall Street checks, withdraw the $102 against this check, sell it again, and so on *ad infinitum*. But this ignores the fact that the bank restrictions caused the currency premium. Had the banks all continued to pay cash, no premium would have been possible. It is astonishing that any one should question this. What Wall Street broker in his sober senses would pay a $102 check for $100 currency, when he could get $102 money by presenting the same check at bank?

Hoarding was certainly increased by the bank restrictions. Deposits of cash in banks almost wholly ceased, and domestic exchange was completely blocked. The experience of August proved beyond dispute the effect of the Wall Street premium. This premium undoubtedly brought to sight great quantities of previously hoarded currency.[1] But no sooner had this money

[1] For obvious reasons, it is very hard to arrive at any trustworthy estimate of the amount of money thus brought into the market. The Wall Street firm which did the largest proportion of the business estimates the amount of money which changed hands during the currency premium at $15,000,000; but this, though based on personal experience, is largely guess-work. Some up-town retail stores sold their daily receipts of currency, a fact pretty publicly proved by the vigor with which other retail houses, in their advertisements at the time, boasted that they had regularly deposited their cash receipts in bank. There were, moreover, many sales of large blocks of currency, chiefly gold certificates, in lots as high as $100,000, which had evidently been locked up in safe deposit vaults. It was a striking incident that on the death, several months before the panic, of a well-known New Yorker, a man of wealth and financial reputation, and a bank director, his executors found in his safe several hundred thousand dollars in gold

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been exchanged and again disbursed, than it vanished once more from sight. No one who passed that month in New York City will dispute this. So completely, under the bank restrictions, did paper money disappear, that by the middle of August business of every kind was being done with specie, and people who in years had never touched a gold piece for their common uses were making daily payments in eagles and double-eagles. This money came not from the "purchases" from currency hoarders, but from the European gold importations. By the end of August practically all the banks had resumed full payment to depositors. But for a long time hardly any paper currency was paid; and how little the Wall Street purchases contributed to the recovery, the bank exhibits show. From August 5 to September 2 — a period covering the existence of the currency premium — the specie holdings of the New York City banks increased by $10,930,700.[1] But holdings of legal tenders increased only $1,785,800, and deposits only $1,064,900.

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NEW YORK CITY.

certificates. The hoarding in New York was largely and perhaps chiefly speculative; in the interior, where it had far more serious effects, it was a natural result of the deposit and savings bank failures.

[1] The net gold import during July was $5,776,401; during August, $40,622,529. Much of this gold was, however, ordered by Chicago and Boston capitalists, and shipped direct to them. Still more was imported by Wall Street exchange bankers, and sold by them at a premium to savings-banks, corporations and business houses. The restriction on bank payments to depositors was the reason why no gold, except that ordered personally by bank officers, was deposited in the banks.

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AUSTIN'S THEORY OF SOVEREIGNTY.

I.

A CAREFUL study of Austin's *Jurisprudence* has convinced me that the theory which is ordinarily put forward under his name is not his at all. If it belongs to any one, Hobbes and Cornewall Lewis deserve that it be accredited to them. So far as I can trace the origin of the statement which is usually put forward as Austin's, it came from Sir Henry Maine. From his *Early History of Institutions* I take the following, which will serve as a sufficient statement of the ordinary misconception, whether originating with Maine or not:

> There is in every independent political community some single person or combination of persons which has the *power of compelling the other members of the community to do exactly as it pleases.* . . . This sovereign . . . has in all such communities one characteristic, common to all the shapes sovereignty may take, the *possession of irresistible force.* . . . That which all the forms of sovereignty have in common is the power (the power, but not necessarily the will) to *put compulsion without limit on subjects or fellow-subjects.* [Pages 349, 350.]

The phrases which I have italicized give the gist of the misconception — the perversion, it may be called — of Austin's theory. The work of misstatement which Maine commenced on the historical side, T. H. Green completed on the philosophical side. According to him, Austin's doctrine "considers the essence of sovereignty to lie in the power . . . to put compulsion without limit on subjects, to make them do exactly as it pleases."[1] These statements give what I may without disrespect call the Austinian myth as it has gradually developed. Cornewall Lewis regarded himself as a disciple of Austin, and undoubtedly thought he was repre-

[1] Works, II, 401.

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senting his master's doctrine correctly when he said: "As long as a government exists, the power of the person or persons in whom the sovereignty resides over the whole community, is absolute and unlimited."[1] But as a matter of fact, no such conception of sovereignty as consisting in absolute force is to be found anywhere in Austin. Before coming to a positive discussion of Austin's doctrine, it therefore seems necessary to get the false conception of his theory out of the way.

The following statement by Austin is typical:

> If perfect or complete independence be of the essence of sovereign power, there is not in fact the human power to which it will apply. Every government, let it be ever so powerful, renders occasional obedience to the commands of other governments. . . . And every government *defers* habitually to the opinions and sentiments of its own subjects.[2]

Again he writes:

> To an indefinite though limited extent the monarch is superior to the governed, his power being commonly sufficient to secure compliance with his will. But the governed, collectively or in mass, are also the superior of the monarch, who is checked in the abuse of his might by fear of exciting their anger, and of arousing to active resistance the might which slumbers in the multitude.[3]

If it be said that Lewis, too, recognizes a distinction between legal and moral force, and speaks of a use of the term sovereignty "to signify the moral influence of a whole or a part of the community upon the acts of the sovereign,"[4] the reply is that Lewis has absolutely no criterion by which to distinguish between moral and legal, while the characteristic thing in Austin is (as we shall see presently) the careful way

[1] Use and Abuse of Political Terms, p. 33.

[2] Jurisprudence, I, 242, ed. of 1869.

[3] *Ibid.*, I, 99. Compare the following from Maine, who seems to think he is urging something *contrary* to Austin: "The vast mass of influences, which we call for shortness moral, perpetually shapes, limits or forbids actual direction of the forces of society by its sovereign." Early History of Institutions, p. 359.

[4] Use and Abuse, p. 40.

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in which he endeavors to fix a basis for such a distinction. So far as Lewis's theory is concerned, whatever actually exercises control must be sovereign; if the "sovereign" is influenced by the wishes of his subjects, so as to "defer habitually" to them, they are really sovereign and he is the subject. "If a sovereign has not power to enforce his commands . . . he is not sovereign."[1] Indeed, Lewis is essentially a legalist, Austin a moralist. Lewis is simply after a definition which will hold water legally; Austin, in spite of the legal form which his main work took, was, like Bentham, preëminently interested in social reform and progress. Law, as such, was to him a means to realize this reform. To be convinced of this, one has only to read his chapters on "Utility," introduced at the outset of his *Lectures*, and note especially what he has to say upon the importance of diffusing correct ethical knowledge among the masses of the people (I, 129–143).

If Lewis thus completely inverts Austin's conception, it is perhaps not surprising to find that the necessity of basing force upon some common interest and purpose, which Green urges against Austin, is not only recognized, but stated by Austin at considerable length.[2] He defines the proper end of a sovereign political government — "the purpose or end for which it ought to exist" — to be "the greatest possible advancement of human happiness."[3] He thus recognizes as distinctly as Green a moral end back of and controlling the political institution. Not only this, but he recognizes that the motive which induces men to obey government is, even under existing conditions, very largely an ethical one, and not mere fear of force,[4] while under proper conditions it would be completely ethical. "Supposing," he says, "that a given

[1] Use and Abuse, p. 15.

[2] It is true that Green and Austin do not use the language of the same philosophical school; Green uses the language of action, Austin that of feeling. But Austin's "general happiness" is *practically* one with Green's "general will."

[3] Vol. I, p. 298.

[4] How far this is consistent with another phase of his teaching, *viz.*, his definition of law, we shall have to consider hereafter.

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society were adequately instructed or enlightened, the habitual obedience to its government which was rendered by the bulk of the community would exclusively arise from reasons bottomed in the principle of utility" (I, 301). And even as things are now, the recognition of the utility of government is "the only cause of the habitual obedience in question, which is *common* to all societies, or nearly all societies" (page 303), utility being definitely Austin's moral standard.

It would be worth while, I think, to reopen the question of Austin's theory of sovereignty, were it only for the purpose of bringing to light this current misapprehension; but that is not my main motive at present. Austin's real theory raises questions as important as does that of Lewis which so far has done duty for Austin's — questions which are completely kept out of sight, however, in the ordinary way of stating it. It is these questions which I propose to raise in this article.

II.

I wish to point out that at the bottom of Austin's conception (and influential in much of the existing discussion) there is a confusion of sovereignty with the organs of its exercise,[1] and that this confusion has for its results a radical error concerning the mode in which sovereignty is exercised — an error which, so far as acted upon, is likely to result in harm.

I have already indicated that Austin has a specific criterion for distinguishing moral from legal order and influence. As it happens, the consideration of this criterion will also suffice to reveal Austin's theory of the residence of sovereignty, and thus to prepare the way for showing his confusion of sovereignty with an organ of its exercise. Austin begins by distinguishing between positive law and moral law. As he does not admit that anything but a command can properly be called a law, one *differentia* commonly employed for distinguishing between the two is not open to him: I refer to that which makes

[1] This confusion, in its nature and in the evil results flowing from it, is parallel with that between the state and government, so clearly brought out by Professor Burgess; *cf.* Political Science and Comparative Constitutional Law, I, 68.

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the moral law a law of the "ought to be," while positive law is a law which actually obtains. Every law implies to Austin a person (or persons) who issues a command, the command being the signification of a wish, together with the power and purpose of inflicting an evil in case the wish is not complied with. "Being liable to evil from you in case I do not comply with a wish which you signify, I am bound or *obliged* by your command, or I lie under a *duty* to obey it" (I, 91). The positive law equally with the moral sets up duty; the moral law equally with the positive implies an actual force and a sanction. Both involve actual authority, an actual law-giver and an actual law-subject, and therefore, on Austin's theory, an evil to which the latter is liable from the former in case of disobedience. The distinction between the legal and the moral, accordingly, cannot be the presence or absence of a personal authority imposing the command and enforcing obedience through sanctions. It can only be in some trait or characteristic of the authority imposing the command. What is the defining peculiarity of this authority?

Positive law, according to Austin, is that set by a political superior to an inferior. Moral law must be distinguished into two classes. Moral law, properly so-called, is a command proceeding from a determinate source and having a sanction and an obligation, yet not positive law, because not proceeding from a sovereign. Moral law, improperly so-called, is that set by the opinions and sentiments of an indeterminate public. The difference between positive law and moral law properly so-called depends then simply upon whether or not the rules are set by a sovereign. But how is this to be ascertained? A sovereign is a power *not* in the habit of obedience to a determinate superior. The commands of such a power are positive law, while the commands of a power which *is* in the habit of obedience to a determinate superior are moral law. That is, the commands which a master issues to a slave, or a parent to his child, are truly laws; yet they are moral, not positive, because the superior power is, in turn, in the habit of obeying a power still above him.

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The distinction between moral law, improperly so-called, and positive law is not so clear on the surface. We have to remember that Austin admits that, in one sense, the opinions and sentiments of the mass are supreme in power; the sovereign "habitually defers" to them. From this point of view, then, moral law improperly so-called is above positive law: it controls, in ultimate analysis, the latter. Why not say that it, the general or controlling opinion, is sovereign? Here we finally come upon the distinguishing factor, disregard of which leads Lewis, Maine and Green all astray. Laws proper must proceed from a *determinate* source, and the public at large is indeterminate. Sovereignty is defined by the following traits:

1. The bulk of the given society are in the habit of obedience to a *determinate* and common superior. . . . 2. That superior is *not* in the habit of obedience to a determinate common superior. [Volume I, page 226.]

It is the determinateness of the authority which issues the commands, then, which is the sole essential *differentia* of sovereignty from the force exerted by public opinion. Austin admits as definitely as Maine that obedience is rendered to other authorities than the sovereign; he admits as definitely as Green that a moral reason (a reason based on social welfare) underlies the bare fact of obedience to the government, and that the society whose welfare is in question is always, as matter of fact, in possession of the supreme or controlling power. But it is not sovereign, because it is an indeterminate or vague body, while law proper can proceed only from a numerically determinate body.[1] So far does Austin go in this direction that he holds that the whole political society is only figuratively called sovereign: "The party truly independent is not the society, but the sovereign *portion* of the society." The following will sum up that part of Austin's definition of sovereignty which alone is of further interest to us:

An independent political society is divisible into two portions: namely, the portion of its members which is sovereign or supreme,

[1] See I, pp. 89 and 174–190.

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and the portion of its members which is merely subject . . . In most actual societies, the sovereign powers are engrossed by a single member of the whole, or are shared exclusively by a very few of its members; and even in the actual societies whose governments are esteemed popular, the sovereign number is a slender portion of the entire political community.[1] [Volume I, page 243.]

III.

The question raised, then, by Austin's conception of sovereignty is precisely whether it resides in a specific numerical portion of the body politic. The question is of special interest in this country; for if Austin's theory is correct, the theory of popular sovereignty is obviously wrong, not only in the crude form in which it is ordinarily stated, but in any possible development of it.

The first thing that strikes one is the slenderness of the reason given by Austin for limiting sovereignty to a part. Substantially his argument is, that every law must be a command, and that a command, in the proper sense, can proceed only from a person or persons capable of specific enumeration. Hence the rules set by public opinion are not truly laws, and hence the body holding the opinion cannot be said to be sovereign.

For, since it is not a body precisely determined or certain, it cannot, as a body, express or intimate a wish. As a body, it cannot signify a wish by oral or written words, or by positive or negative deportment. The so-called law or rule which its opinion is said to impose, is merely the sentiment which it feels, or is merely the opinion which it holds, in regard to a kind of conduct. [Volume I, page 188.]

To Austin the statement that a body uncertain as to number cannot act as a body, and cannot, therefore, issue commands,

[1] Austin's theory is thus the complete antithesis of Rousseau's. According to Rousseau, it is of the essence of sovereignty to belong to the whole as a whole, *i. e.*, to the general will. According to Austin, it is of its essence to be partial. Green, in the criticism already referred to, opposes Austin and Rousseau as types of the theories which make sovereignty consist in force and will respectively. I hope it is now obvious that both find it equally in will, but that one conceives of this will as necessarily inhering in a part, the other as inhering in the whole of society.

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seems so self-evident as to need no further argument. To one surrounded with institutions of a "popular" character, and accustomed, almost every day, to see government affected and controlled by various agencies of clamor, mass meeting, petition and newspaper writing, this inability of a body numerically uncertain to express itself, as a body, in ways having the force of command, will, I think, seem less axiomatic. Austin himself admits that it is "not the style in which the desire is signified" that makes it a command. Willingness to inflict harm in case of disobedience, is the essence of the command. "*Preces erant, sed quibus contradici non posset,*" — these were commands, though taking the form of a humble request.[1] He distinctly states that one who does not comply with the wishes of the indeterminate body which sets the rule of public opinion, will probably suffer, by reason of not complying, some inconvenience or evil from some party or other; and that by this prospect of evil the acts of persons obnoxious to it are influenced to take a specified form, and from this fact exhibit a steadiness and uniformity which they would otherwise probably lack.[2] Against all this likeness to true laws and to real sovereignty, the only point of distinction which marks off what Austin calls moral law, improperly so-called, is that "the person who will enforce the so-called law against any future offender is never determinate and assignable," — a somewhat slight support, I submit, upon which to base the whole difference between law and moral sentiment, between real sovereignty and mere opinion. Indeed, it seems as if Austin were here reasoning simply in a circle. First the law is defined as a command set by the sovereign; then, having the benefit of the idea of sovereignty to help differentiate political from moral law, the sovereign is defined as the power which sets law — the idea of determinateness being slipped in so incidentally as almost to conceal its fundamental importance.

Let us, however, grant Austin his assumption and see how it stands the test of facts. Austin's idea of the residence of sovereignty in the United States is familiar to students of con-

[1] Vol. I, p. 91. [2] *Ibid.*, p. 190.

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stitutional law. His theory is that neither the federal government as such, nor the separate state governments as such, nor yet a combination of the two is sovereign; going back to the clause of the constitution which indicates how amendments are to be made, he finds there the key to the problem. The sovereign is the electorate appointing the legislatures of the respective states, the electorate being taken as an aggregate body.[1]

What is this electorate, either as a class, or as to the particular members which compose it? Suppose a generation has passed away since any amendment has been passed, or since any legislature has acted upon any amendment proposed by Congress; where is the portion or class constituting the sovereign to be found? Those who actually determined the constitution may no longer be living; if it be said that those who would vote in case a new question were submitted are the class sought for, this would base sovereignty not on the actual expression of wishes and the observance of these wishes by others under sanctions, but on a mere capacity or potentiality. Admit, however, that sovereignty can be thus latent; then is every individual who composes this possible electorate a sharer in sovereignty? He must be, if the class is to be determinate (capable of having its constituents specified); yet, *per contra*, it is evident that, prior to any given vote, there is no way of telling in respect to any given individual whether he will be in the majority or in the minority. If it turns out that he is one of the defeated party, we are in a hopeless dilemma. If we say he did share in sovereignty because he had a right to vote, we say sovereignty may be exercised apart from the utterance of commands, indeed, even in opposing the fundamental command. But if we say that, since not participating in the expression of the

[1] Judge Jameson, in an article upon "National Sovereignty," POLITICAL SCIENCE QUARTERLY, V, 193 (June, 1890), has criticised the correctness of this definition as an account of the actual facts, and has also brought out the important fact that the electorate (always of course a mere majority, not a whole) makes its decisions, not as a separate whole, but within the processes of the nation itself, and controlled in a multitude of ways by this larger whole, of which it is in reality simply an organ. But I wish here to admit Austin's own definition and show that, by his own definition, this sovereign is *not* determinate.

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supreme command, he is not sovereign, the question arises by what right he voted at all. Why is he not disfranchised from this time on? Take, again, the citizens of a state which is one of the number constituting less than one-fourth of the whole. Suppose this state votes against an amendment which is adopted; are the citizens in this state participants in sovereignty or not? We come here, as before, to an insoluble contradiction; sovereignty is not determinate until after it has been exercised — until the vote has been taken. I fail to see how any definition whatever of sovereignty in the United States could be given which would not make it indeterminate, in the sense in which Austin uses that word.

Again, consider the dispute as to the residence of sovereignty in Great Britain. Is it in the crown alone, since whatever the courts and the legislature do, is done, according to legal theory, by the crown through them? Is the sovereign the crown, the lords and the commons acting conjointly? Is it the electorate of the House of Commons? Or is it the majority of such electorate? In the first case, the crown can be identified with a person only by a great stretch of the imagination; it means a legal institution and hence cannot be determinate. In the second case, we have an approach to determinateness, although the problem about majority and minority is sure to arise. In the third case, we get again into difficulty in trying to decide when and by what part of the electorate sovereignty is exercised. Moreover, all these different views of the residence of sovereignty have been maintained by competent judges within the last fifty years. Austin himself holds one; his disciple, Holland, another. When careful students of constitutional law cannot agree as to the body of persons in whom sovereignty resides, what becomes of determinateness as the essential feature of sovereignty? If Austin were correct in supposing a numerically definite body essential to sovereignty, such uncertainty as this would mean that Great Britain is in a state of anarchy, having no such determinate body capable of detection even by a body of experts. Were Austin correct, Great Britain would long ago have been engaged in a practical

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struggle to decide the uncertainty as to the possessors of sovereignty, since the anarchy could be settled only by having it clear that just this set of persons and no other were those from whom all laws proceed.

The ultimate weakness of Austin's theory is that, in identifying sovereignty with a part only of the body politic, he gives (and allows) no reason why this limited body of persons have the authority which they possess. The conception of sovereignty as the possession of power by a numerically determinate body of persons, supplies no criterion for determining what body of persons shall thus be set off, or how many of them there shall be. Such a conception, applied to any existing government as such (to say nothing of the ultimate sovereignty), would only state the bare fact that, at the given time, just such and such persons, so many in number, happened to make up the government. Let the government be already recognized as a certain definite body of persons, and, on Austin's theory, you could say that that body is the government: let there be any dispute as to who is the real government, and, on Austin's theory, you would have to wait till the dispute was settled and a certain set of men were, past all controversy, in possession of the ground. Number, without a principle of measurement or rule of distribution, is about as vague a defining principle as may be imagined. As it happens, in every existing civilized state governmental power is in the hands of a certain body of persons, capable of more or less accurate assignment (very rarely, however, of such complete assignment as Austin's theory would require), and thus Austin's conception seems to agree fairly with facts. But that there are such determinate governments, is a matter lying quite outside the range of Austin's theory; they exist precisely because large social forces, working through extensive periods of time, have fixed upon these governments as organs of expression. It is these forces, gradually crystallizing, which have determined governments and given them all the specific (determinate) character which they now possess. Take away the forces which are behind governments — which have made them

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what they are, and the existence and character of these governments is an accident, likely to be changed at any moment. Admit these forces, and, since they determine the government, *they* are sovereign.

IV.

This brings us explicitly to the question of the relation of government to sovereignty. Can government be identified with sovereignty? My contention thus far has been that there is no ground for holding that the residence of sovereignty can be found in a certain definitely limited portion of political society. Broadening the field I shall now attempt to show that the most important operations of sovereignty, namely, the institution and development of law, are incompatible with an identification of sovereignty with government.

My thesis is, that the institution and development of law as an operation of sovereignty is consistent only with the theory that government is an organ of sovereignty, not sovereignty itself. A natural cleavage of the discussion appears in the fact that law falls easily into two classes, one of which, constitutional law, is bound up with the very existence of government, while the other, municipal law in the broad sense, presupposes the government already established and already at work.

Dealing first with constitutional law, we are struck by the apparent fact that law determines government. As Austin says:

> Constitutional law is that which determines the character of the person or persons in whom, for the time being, the sovereignty shall reside: and, supposing the government in question an aristocracy, or government of a number, determines the mode in which the sovereign powers shall be shared by the constituent members. [Volume I, page 274.]

If this definition is to be objected to, it is on the ground of narrowness rather than of breadth: certainly modern constitutional law is as definite in its statements of the manner in which the various constituent factors of government shall

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exercise their powers (in their large features), as it is in regard to the character and number of the persons concerned. But taking the minimum of determination allowed by Austin, we find that constitutional law implies a determining force back of the government and giving it character, both as to persons and as to the distribution of power among them. Surely *this* force, then, is sovereign, and the formation of constitutional law is the primary and radical exercise of sovereignty. But such a conception is inconsistent with Austin's whole theory. How does he avoid the conclusion? By holding that constitutional law is not properly law at all, but is positive morality, — the statement of a certain line of conduct which will meet the approval of an indefinite mass. "Constitutional law and international law are nearly in the same predicament. Each is positive morality, rather than positive law." Against the government, constitutional law is enforced and protected from infringement by merely moral sanctions.[1]

Now personally I should agree with Austin in thinking that the ultimate basis of order in the state, constitutional as well as all other, is moral. But Austin goes to the point of holding that it is *merely* moral — which is quite another matter. It may indeed be said that the moral (or social) forces get definition and crystallized form in determinate political institutions, and that constitutional law is one of the ways in which the moral forces, otherwise relatively inchoate, assume shape. This is only to say that sovereignty, the working will of society, is indefinite, or a more or less shapeless wish, except as it finds expression in organized institutions, of which government is one. It is to say, in other words, that all institutions, government included, are sovereignty, the moral or social force, *organized*. But Austin makes a complete gap between the social forces which determine government and that government itself. The former cannot state law, the latter can; the former is a mere aggregate, the latter is sovereign; the former is *merely* moral, the latter *merely* legal. The conception that constitutional law is not law will, I believe, commend itself as little to the lawyer,

[1] Vol. I, p. 276.

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as the conception that laws issued by government are not ethical will commend itself to the moralist.

The stress here is so great that Austin actually contradicts himself in words — a thing which he very rarely does. On page 196 of the first volume, he points out that, unless there is to be continuous anarchy, the mode of acquiring government must be prescribed as to its generic modes — that the question, how far a society has attained political stability and tranquillity, is precisely the question of predetermining who shall assume government and how they shall assume it. Speaking of the anarchy in the Roman Empire, he goes on to say that "there was no mode of acquiring office which could be called constitutional; which was susceptible of generic description and which had been predetermined by *positive law* or morality." Here the very orderliness of political society is supposed to be due to the fact that government, as to its *personnel* and chief methods, is determined by law. But on page 271 and the following he returns to his only consistent position and holds that all attempts to regulate the line and mode of succession are advisory only and possessed of only moral value.

I suppose every one would agree that one of the greatest political advances yet made is precisely in substituting regular and definite modes of assuming governmental powers for irregular and chaotic methods; that it is the change from political anarchy to order. Yet this entire advance, according to Austin, cannot be conceived as an advance in law, but only in morality; and in morality, be it remembered, in a sense which shuts all definite organization out of the moral region, leaving it simply the mere expression of wishes on the part of individuals as individuals.

Coming, now, to the question of constitutional progress, of changes in the form of government, we find that Austin's theory does not provide any way of treating them. All constitutional changes whatever, according to him, are directed against sovereignty; they are not its further expression. They affect it; they do not issue from it. That is to say, they are revolutionary. Take the question of the formation of

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the North German Confederation. Upon Austin's theory, the governments existing prior to that Confederation were themselves sovereign. Grant this, and the Calhoun theory follows at once. The only alternative is that the change is completely revolutionary. Revolutionary, in one sense, of course it is. New ends are set up; new means are used in making the changes; new agencies for future action are created. But a revolutionary act by a permanent and continuous sovereign is one thing; a revolution in the sense of a complete submergence of sovereignty, a period of interregnum in which there is no sovereign, and then an utterly new sovereign with no point of continuity with the old, is another thing. Yet there is no alternative between this view and that which would make the new government simply a creature dependent upon previously existing sovereigns and, therefore, dissoluble at their will.

As matter of fact, the erection of the new governmental structure was led up to by a series of orderly changes all pointing the same way. There was the tendency towards a common military system, towards a common customs system and towards a common jurisprudence, besides a large number of minor social changes. The overt acts by which the new government was brought into being were *through* existing agencies in every respect.[1] What conclusion is it possible to draw, save that the immediate governmental agencies which set up the new government were not themselves sovereign, but were the organs of a sovereignty acting through them; a sovereignty which, by modifying these very agencies, created a new, more adequate agency, partially displacing the old? There was no more an interruption of sovereignty than there is an interruption of organic life when an organ of an animal is morphologically changed.

The case against Austin's theory becomes even stronger when we take into consideration the minor modifications which government is always undergoing. What is the

[1] *Cf.* Hudson, "The North German Confederation," POLITICAL SCIENCE QUARTERLY, VI, 424 (September, 1891).

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authority for this change in government? What validity does it have? Here again, upon Austin's theory, there is no alternative between saying that it is not a modification of government at all, or else that, politically speaking, it is purely revolutionary. To say that it is not a modification of government, is to say that if it is a change produced *by* government, it cannot possibly be a change *in* government. Government, according to Austin, cannot be a subject or recipient of law: it cannot have duties. Whatever changes it undergoes, are in respect to merely moral considerations and may be retracted at any moment. Take, for example, the change which government, both national and state, has undergone in this country since 1820. All our ordinary views of constitutional law would make us say that the sovereignty, the effective social force, had been making over the form and operation of government so as to make it express more adequately the aims and methods of the sovereign. Upon Austin's theory we must either say that the government is just what it was in 1820, that the government existing then is still the sovereign, and could retract the changes which have occurred, since they are wholly its creatures, or else that there have been a succession of interruptions of sovereignty, of revolutions, so that the sovereign itself has changed as many times as the government has been modified.

V.

If it stands this way with the adoption and development of constitutional law, how is it with municipal law? In the first place, common, as distinct from statute law, evidently presents difficulties — difficulties which, taken in connection with his own preferences, led Bentham to denounce all "judge-made law" as essentially usurpation. Austin, as against this view, has no great difficulty in showing that judicial legislation, when overt, may be regarded as proceeding from the sovereign; that the judge as much as the legislator acts as authorized by the sovereign — as a part of the sovereign. The problem recurs, however, with renewed stress when we come to the part played by custom in the development of law. Austin himself

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contends that custom is not law until expressly so declared by the judiciary. He holds that custom may be the occasion, but is never the source of law.[1] This position is so untenable, however, even from a strictly legal standpoint, that Holland, on the whole Austin's disciple, admits that the courts act retrospectively as well as prospectively upon customs, making decisions which declare what the law *was*, based upon the fact that the custom was such and such at the time. Holland would evade the difficulty by holding that this recognition of custom as law is due to an express or tacit law, giving to such customs the effect of laws.[2] Now in the first place, this may be doubted as a fact. Two cases, which I borrow from Wharton, will show the nature of the doubt. One case is the abolition, in the American colonies, of English law, both common and statute, by mere disuse, — an abolition which has been noted by American courts as having occurred prior to any action whatever of courts or legislature. The other is the recognition given by the United States to some of the customs of the Indian tribes relating to marriage and inheritance. But give Holland the benefit of the doubt. To say that customs are regarded as laws by virtue of a *tacit* law to that effect, is simply to beg the whole question. It is to say that custom is law in virtue of custom. And even if the law is statutory, it is always declaratory of what has previously been the case, rather than constructive of future practice. It simply takes note of the fact in such a way as to remove from it the doubt that might attach to it in complicated cases, or that might be thrown upon it by captious persons.

Another fact is equally fatal to the theory that sovereignty operates through the commands of a certain determinate portion of society. Not only is "ancient and reasonable custom" law, but the development of law is kept up by the fiction that any principle which is found by the courts to-day to be involved in past decisions of the court, not only is now law, but always has been law.

[1] Vol. I, pp. 103–105 and 204.
[2] Holland, Jurisprudence, p. 48.

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A principle newly applied is not supposed to be a new principle; on the contrary, it is assumed that from time immemorial it has constituted a part of the common law of the land, and that it has not been applied before only because no occasion has arisen for its application.[1]

It is hardly necessary to add that this assumption is made, not only in cases where the principle thus declared always to have been law was not in the consciousness of earlier judges, in whose decisions it is found by presumption, but in cases where it would have been strongly repudiated by them if consciously presented. I confess I should like to see how a consistent Austinian would deal with law thus formed; unless he can deal successfully with it, the theory that law, as the operation of sovereignty, is always the command issued by a determinate part of society, has no standing whatever.

Turn from the formation of explicit law to those laws whose authority is actually felt by the individual, and which are constantly enforced as against his own whims or caprice. As matter of fact the regulations which control most effectively the lives of most men who are not criminals, are not the laws formally declared by the state in its capacity as government, but the minor laws of subordinate institutions — institutions like the family, the school, the business partnership, the trade-union or fraternal organization. A large part of legislative activity consists in sketching in outline the sphere of these various institutions, giving to each institution within its own circumference almost plenary power. It is by and through the activities of these institutions, infinitely more than through the direct action of government, that the order of society is maintained. The question I raise is concerning the disposition to be made of the authority exercised in and by such institutions. What are we to say of the continued exercise of regulating authority involved in the operation of a family, a factory and a church? Does the sovereign command these things? Does the sovereign command a father, under sanction of punishment, to exercise just such and such control over his

[1] Cooley, Torts, p. 13.

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children? Holland indicates rather than solves the problem when he says:

> All authority is, of course, exercised by permission of the state; *e.g.*, of a father over his family, but it is better to see here only a relation of private life sanctioned by the sovereign, not a delegation of the sovereign power.[1]

Why better? Better for the theory, undoubtedly; but on Austin's principles it is absurd to talk of sanction save where there is command, and, therefore, threatened penalty. Sir Henry Maine has called attention to the difficulty in thinking that the local customs of the Jews under their vassalage to Persia were maintained at the command of the monarch at Susa. But do we have to go so far afield for the difficulty? Surely it is paralleled in the case of the authority exercised in any social institution.

But, it may be objected, you have already admitted that the government lays down the lines of these various institutions, and, in that sense, it does command whatever special deeds are involved in the carrying out of the authority thus entrusted. Is not the authority *delegated* by sovereignty? In any case, may we not say that whatsoever the sovereign does not forbid, it enjoins? These questions seem to me to point to an undoubted truth, which, however, they express in somewhat mechanical form. It is not that there is already a sovereign *and* institutions, and that the former then delegates to the latter authority to act. The institution exists only as it has this effective authority, and sovereignty is only a metaphysical substratum, save as it is embodied in positive institutions. Surely a government apart from all special institutions is a pure abstraction. The truth pointed to by the phrases is the fact that sovereignty exists as a definite actuality only as it is realized in institutions which act as its effective organs. The difficulty with the idea that "whatever the sovereign does not forbid, it enjoins" is, that it proves altogether too much for the doctrine of Austin. The result is that the whole

[1] Holland, Jurisprudence, p. 77.

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social activity, the entire play of social life, has to be conceived as carried on in obedience to the commands of a certain particular group of persons, and in fear of penalties to be imposed by this group in case of disobedience. Surely this differs little, if at all, from a *reductio ad absurdum* of the doctrine.

I mentioned in an earlier part of this paper that attention would be directed further on to Austin's statement that the ultimate reason for obedience is recognition of the utility of the government. We have now arrived at the point where the contradiction is apparent between this idea and the notion that sovereignty, as a definite part of society, operates through the imposition of commands with their correlative sanctions. Command and obedience are correlative terms. They must exist on the same plane; if a command is a statement of a wish with a threat of evil attached in case of disobedience, then obedience is deference to this wish for fear of the evil. How, then, can it rest upon a perception of utility (unless, indeed, this simply means a perception of the usefulness of not getting punished)? Persons may act just as the one commanding would wish them to act; but, upon Austin's definition, such conduct is not "obedience"; it is not response to command unless it occurs from fear of penalty. We have seen that we must extend the idea of the operation of sovereignty and of recognition of its authority clear through from constitutional law to the working of institutions like the family — wherever there is authorized control on one side, and subjection on the other. If this complex of organizations exists for the sake of what Austin calls utility, then the operation of sovereignty cannot be reduced to the imposition of commands by a certain portion of society upon another portion, the part which imposes being itself exempt. And, conversely, if sovereignty is what Austin says it is, then we must not stick at saying that the whole organization of society is based upon fear of the commands of a certain part of society.

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VI.

In concluding, I wish again to refer to the general bearings of this discussion. I should hardly think it worth while to spend so much time criticising Austin if he did not represent a type, and an important type, of political theory. I do not believe that any theory whatsoever that places sovereignty in some one part of the social organization can logically avoid the other positions of Austin. If sovereignty resides in a part, it is necessary that this part be numerically determinate; otherwise sovereignty is doubtful and anarchy supervenes. It is also necessary that one portion should be wholly and only sovereign while another portion is wholly and only subject. Given this radical split, sovereignty must be exercised by way of commands merely. There is no common interest which holds together the two sides; there being two separate parts, one can act upon the other only by way of command, while this other can react only by more or less complete obedience from fear of punishment. Although not all thinkers who have rejected Rousseau's idea of sovereignty as resident in the common will have come to these conclusions, I cannot resist the feeling that it is because they are less logical than Austin, rather than because they have presented any theory essentially superior to his. At all events, I would raise the question whether there is any alternative between a theory like Austin's, which, placing sovereignty in a part of society, makes government an entity *per se*, whose operations are all commands, and a theory which finds the residence of sovereignty in the whole complex of social activities, thus making government an organ — an organ the more efficient, we may add, just in proportion as it is not an entity *per se*, but is flexible and responsive to the social whole, or true sovereign.

But Austin not only serves us by presenting in a typical form one theory of sovereignty, with its logical consequences worked out; he also, as it seems to me, points in the right direction in his emphasis upon determinateness. I cannot, indeed, retract what I have said already about the uselessness,

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as matter of theory, and the unverifiableness, as matter of fact, of the claim that sovereignty inheres in a certain specific number of persons. But "determinate" suggests another idea, that of definite organs. Except as sovereignty secures for itself definite and definable modes of expression, sovereignty is unrealized and inchoate. Constitutional development has consisted precisely in creating definite ways in which sovereignty should exercise its powers. The great weakness in Rousseau's theory that the general will is sovereign, is that he makes its generality exclude all special modes of operation. While, then, Austin's identification of the determinate factor with a specified group of individuals seems indefensible, yet in insisting that sovereignty requires determinate forms of exercise he is guarding us against the error which would make generality equivalent to vagueness. The practical, as well as the theoretical problem of sovereignty, may fairly be said to be this: To unite the three elements isolated by Lewis, Rousseau and Austin respectively: force, or effectiveness; universality, or reference to interests and activities of society as a whole; and determinateness, or specific modes of operation — definite organs of expression.

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POSITIVE LAW AND OTHER LAWS:

A COMPARISON AND CONTRAST.

I.

JURISPRUDENCE of the English or analytical type is directly conversant only with the law of the lawyer and of the tribunal, or with what is generally, though not very happily, styled positive law.[1] A positive law is a command of the sovereign power of the state, formulated and administered by the government of the state, prescribing a course of conduct to one or more subjects of the state.

Assuming the correctness of this definition, I proceed to draw a short comparison and contrast between positive law and other kinds of law. This double process should result in a better apprehension of positive law and prove a safeguard against that mingling of it with certain of its congeners which has always been a serious obstacle to clear thinking on subjects pertaining to legal science. The effects of such confusion can be readily seen in most of the definitions of law formulated by philosophizing jurists from Cicero downward. In the main, these definitions are worse than profitless — a "Serbonian bog," where the mind sinks in a mixture of rhetorical flourish, dogmatic theology, moral thesis and political theory.[2] Few who have seriously tried to bring a distinct conception out of this chaos will find it in their hearts to

[1] In this connection, "positive" means existing by position, *i.e.*, set by "the will of a legislator" (Kant, Phil. of Law, trans. by Hastie, p. 55), or "by the will of those that have had the sovereign power" (Hobbes, Leviathan, Morley's Univ. Lib., ch. xxvi, p. 132). "Authoritatively imposed."—Holland, Jurisprudence (1st ed.), p. 35. To the idea of position, Austin adds that of human, as distinguished from divine, position.—Jurisprudence, vol. i, pp. 85, 175. "This arbitrary use of the word has, perhaps, become technical with jurists."—Clark, Practical Jurisprudence, p. 135.

[2] For a collection of these definitions, see Holland, Jurisprudence (1st ed.), pp. 17, 18; Clark, Practical Jurisprudence, pt. 1, ch. viii.

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censure Austin, as Professor Pollock has done, for filling "six lectures with a discussion of what positive law is *not*." [1]

II.

"Between the laws of nature and the laws of the Queen," says Hearn, "there is no resemblance and no means of comparison." They "are related in the same manner and to the same extent as in Latin *jus*, meaning law, is related to *jus*, meaning sauce." [2] If this statement were quite accurate, Ulpian could scarcely have made the blunder of attributing to *jus naturale* (mentioned as one of the three divisions of private law [3]) the instinctive actions manifested by the lower animals, as well as by mankind, in their sexual unions and the rearing of their offspring. [4] Doubtless this singular aberration of his would have been impossible but for the fact that the idea of a law of political society and the idea of a law of nature both contain the element of uniformity of occurrence. Positive laws are propositions expressing certain uniformities of conduct — courses of conduct — to be observed by human beings: and laws of nature are propositions expressing uniformities of the coexistence of things or succession of events in nature. "Wherever we can detect uniformities or similarities," remarks Jevons, "we so far create a science and arrive at natural laws." [5]

But, excepting this single point of coincidence, positive laws and the laws of nature are totally disparate. Positive laws are commands. "Natural laws, on the other hand, are not commands, but assertions respecting the invariable order of nature." [6] They cannot be cast in an imperative mold, because they are only our way of stating as much as we have made out of the order of the universe.

[1] Essays in Jurisprudence and Ethics, p. 2.

[2] Legal Duties and Rights, pp. 8, 9.

[3] Collectum est enim ex naturalibus praeceptis aut gentium aut civilibus. Just. Inst., 1, 1, 4.

[4] Jus naturale est, quod natura omnia animalia docuit, *etc.* See Ulpian, Dig., 1, 1, 1, 3; Just. Inst., 1, 2, pr.

[5] Lessons in Logic, pp. 1, 2.

[6] Huxley, Science Primers: Introductory. Pollock, Essays in Jurisprudence and Ethics, ch. ii.

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III.

The laws of art or of practice are formulas denoting uniformities of conduct that constitute the means necessary to the production of proposed ends.[1] The faculty of reason, perceiving the causal relation existing between the conduct and the ends conditioned upon it, is naturally represented as enjoining it upon all those who adopt the ends, under penalty of total or partial failure in case of non-observance. This accounts for the fact that art always expresses itself "in the imperative mood, or in periphrases equivalent to it."[2]

Nevertheless, it is plain that the laws of art are not really commands. Since a command requires at least two parties, a superior and an inferior, there is obviously a wide divergence from literal phraseology when one's reason is said to command him to follow the means necessary to a chosen end. Nor does the inevitable defeat caused by a departure from the laws of art[3] possess the character of the sanction that every true command implies: for the defeat is an evil that comes simply in the ordinary course of nature, while the sanction is an evil inflicted directly or indirectly by a superior in consequence of disobedience to his will.

IV.

When not regarded as expressive of divine legislation,[4] the laws of hedonistic or utilitarian systems of ethics, like the laws of art, are rules of conduct for the realization of an end. This end, according to the egoistic form of theory, is personal happiness or well-being. According to the universalistic form of theory, it is general happiness or well-being.[5] Thus Herbert

[1] See Mill, Logic, bk. vi, chap. xi, § 2.

[2] *Ib., id.* § 1.

[3] Bentham terms this a "physical sanction" (Prin. of Morals, *etc.*, chap. iii, §§ 3, 8) and is justly criticised by Austin (Juris., pp. 217–219).

[4] The rules of utilitarian ethics are thus treated by Paley (Prin. of Moral and Pol. Phil.) and Austin (Juris., pp. 106–170). See Sidgwick, Hist. of Ethics, pp. 238, 245.

[5] Sidgwick, Methods of Ethics (1st ed.), chap. i.

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Spencer, who is a universalistic utilitarian, explains that moral laws are the "deductions" that science draws "from the laws of life and the conditions of existence," respecting "what kinds of actions necessarily tend to produce happiness."[1] And Hobbes, an egoistic hedonist, asserts that the "laws" of moral philosophy are improperly so called, because they are but theorems or conclusions "concerning what conduceth to the conservation and defense" of mankind.[2] Only in a single particular is there any divergence in form between laws of art and the laws of utilitarian ethics. While the ends to which the laws of art are directed may be freely chosen or rejected, the end to which the laws of utilitarian ethics point out the means, must, by virtue of a psychological necessity, be adopted by every man.[3]

> No school [says Spencer] can avoid taking for the ultimate moral aim a desirable state of feeling called by whatever name — gratification, enjoyment, happiness. Pleasure somewhere, at some time, to some being or beings, is an inexpugnable element of the conception.[4]

If, now, care be taken to look at the kind of ethical laws described above, as in themselves they really are, — if the formal characters of political and social laws be not falsely attributed to them, — it will be seen that they are merely prescriptions of reason, prudential maxims,[5] not commands, and that, consequently, they are as devoid of sanction[6] in the strict sense as the laws of hygiene or navigation or any other art.

Of quite another aspect are the laws of transcendental or intuitional ethics. These are generally presented as absolute[7] rules of human action, delivered authoritatively and with a

[1] Data of Ethics, chap. iv, § 21, p. 57.

[2] Leviathan (Morley's Univ. Lib.), chap. xv, p. 78.

[3] Sidgwick, Methods of Ethics (1st ed.), pp. 24, 26; Bentham, Prin. of Morals, *etc.*, chap. 1, §§ 11, 13; Ward, Dynamic Sociology, vol. ii, pp. 111–157.

[4] Data of Ethics, chap. iii, § 15, p. 46.

[5] Kant, Phil. of Law (trans. by Hastie), pp. 16–17.

[6] "Any conditional evil annexed to a law [command] to produce obedience to it." Austin, Juris., p. 523.

[7] "Absolute," *i.e.*, "not conditioned on our knowledge of the end and of its connection with the actions prescribed." Sidgwick, Methods of Ethics (1st ed.), p. 3; Kant, Phil. of Law (Hastie's trans.), p. 17.

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measure of constraining force[1] by a power of intelligence[2] denominated "conscience," "principle of reflection," "moral faculty," "practical reason," *etc.*

The juridical terms invariably employed in describing the laws of intuitional ethics tend somewhat to confuse; still there can be little difficulty in discerning that, unless they are conceived to be rules prescribed by God through moral consciousness, they are commands only by metaphor. For, in the first place, there is no commander distinct from the commandee, to whom these laws can be referred. The "autonomy of human nature" means simply that man discovers in consciousness a rule of life, that his nature or his "whole normal nature" is "a law unto himself," not that he *commands* a law unto himself.[3] Furthermore, commands always spring from some-one's desire[4] for their performance. But a prominent characteristic of the rules of intuitional ethics is, that they are revealed independently of such desire and by a necessary operation of the moral constitution.[5]

> In its origin [says Lorimer, ethical] law, like existence, is thus *involuntary* and inexplicable. It is an objective phenomenon which consciousness presents to us not from without, but from within; a conception which is imposed on our cognitive faculties *a priori;* a postulate necessitated by the fact that we are.[6]

It would seem, then, that already we have gone far enough to make plain that, save in the light of an adventitious theistic hypothesis,[7] the laws of intuitional ethics are not commands at all.

[1] "Had it power as it has manifest authority, it would absolutely govern the world." Butler, Sermons on Hum. Nat., ii, div. 3.

[2] "Conscience is thus seen to be a cognitive or intellectual power, not a form of feeling." Calderwood, Hand-book of Moral Phil., p. 65.

[3] See Lorimer, Inst. of Law, chs. iii, vi. *Cf.* Kant: "For how could any one believe that he has a source of universal law in himself, without principles *a priori?*" Phil. of Law (Hastie's trans.), p. 18.

[4] "A command, then, is a signification of desire." Austin, Juris., p. 90.

[5] Semple's trans. of Kant's Metaph. of Ethics, pp. 101, 103, quoted by Lorimer, Inst. of Law, pp. 192–193.

[6] Lorimer, Inst. of Law, p. 3.

[7] "Adventitious," because the view that God *commands* through conscience is not essential to the intuitional theory. See Calderwood, Hand-book of Mor. Phil., pt. v, ch. iv, p. 285; Taylor, "The Law of Nature," in *Annals of the American Academy*, April, 1891, p. 569.

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V.

The natural law (*jus naturae, droit naturel, naturrecht*) of the practical sciences, in its broadest sense, is the whole code of moral duty so far as it is cognizable by the light of nature apart from revelation ;[1] but according to its narrower meaning, which is also the one dominant among modern moralists and legists, it is that portion of the laws of ethics, or moral laws, the enforcement of which is possible and fitting.

It is obvious that mere motions of thought and feeling are incapable of being exacted. "No external legislation," remarks Kant, "can cause one to adopt a particular intention or to propose to himself a certain purpose ; for this depends upon an internal condition or act of the mind."[2] Obviously, too, there are certain overt actions fully warranted by the laws of ethics which it would be harmful or highly inconvenient to attempt to realize by compulsion. If we abstract from the laws of ethics all that refers to the subjective elements of duty, such as the motive accepted, the intention cherished, *etc.*, so leaving only rules of external action ; if, further, we abstract from these all that relates to conduct unsuited to be made the subject of positive legislation, the residuum thus formed is natural law.[3] In other words, natural law is so much of the law of ethics,[4] from whatever standpoint regarded, as bears directly upon the social relations of men and may properly be actualized by force. I say "from whatever standpoint regarded," because it must not be supposed that

[1] Sidgwick, Hist. of Ethics, p. 160.

[2] The Metaph. of Morals (Hastie's trans. of Kant's Phil. of Law, p. 25).

[3] According to Thomasius and Kant and their followers of the "negative school," this residuum comprises only the "perfect" or "determinate" obligations of justice or probity, as distinguished from the "imperfect" obligations of charity or benevolence. Lorimer, Inst. of Law, ch. xi ; Schopenhauer, The World as Will and Idea (trans. by Haldane and Kemp), pp. 444–445.

[4] Holland (Juris., 1st. ed., p. 26) makes natural law part of the laws of public opinion (called by him "moral laws"). If this were correct, natural law would not have that independence of the will of man which its apostles especially claim for it ; and any appeal of the reformer from public opinion — the opinion *civium prava jubentium* — to the "eternal" law of nature, would be an absurdity. See Taylor, The Law of Nature, *loc. cit.*

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natural law can be founded only upon intuitionism. As being distinctly laws of outward action, Herbert Spencer's "deductions" from "the conditions of existence" and Bentham's "dictates of utility" require less limitation to convert them into natural law than Kant's "pure rational principles" or Lorimer's "dicta of our general and normal nature."[1]

Without pushing the analysis further and encountering the inquiry: What morally-founded rules of external action are fitted to be enforced or ought to be transmuted into positive regulations? which is no other than the much-debated question of the true "limits of the state," — it has become evident that modern natural law, *per se*, is ideal enactment, or the positive law that *ought* to be; or, changing the expression, that it consists of ideal as opposed to real commands, and that consequently the so-called rights conceived to flow from it are ideal claims whose ultimate basis is deemed to be reason or the "very nature of things."

VI.

In his famous "Funeral Oration of Pericles," Thucydides speaks of the regard of the Athenians "for those unwritten laws which bring upon the transgressor of them the reprobation of the general sentiment."[2] This phrase of an immortal speech serves well to introduce to us the laws of public opinion or of society. Examples of these are found in the laws of etiquette that guide the world of fashion, in the laws of honor prevailing among the class called gentlemen, in the customs that regulated the life of primitive communities before the rise of the state and the organization of justice,[3] and in that important aggregate of rules which obtains in the great society of civilized nations and is called international law.[4]

[1] Pollock, Hist. of the Science of Pol., pp. 109–111. Spencer's leaning toward *naturrecht* is seen in Pol. Insts., § 534, pp. 533 foll.

[2] Thucydides, ii, 37 (Jowett's trans.).

[3] See Maine, Village Communities, p. 68 foll.; Letourneau, Property, pp. 225, 292–300.

[4] "Obtains," *i.e.*, "is a matter of *fact* and *practice* as distinguished from the principles of justice which *ought* to regulate the mutual relations of nations in the opinion of this or that authority." Clarke, Practical Juris., p. 177.

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We have at last reached a kind of laws that are commands. Austin and Hearn, indeed, deny that they are such: Austin, mainly on the ground that a command cannot proceed from an indeterminate body, *i. e.*, one whose members are incapable of being precisely indicated by a specific or generic description;[1] Hearn, on the same ground and, further, because the laws of opinion "have not the essential characteristic of a command, a true sanction. No definite penalty is attached to the breaches of these customs, but only the vague sentiment of general disapprobation."[2] Now, although these laws emanate from an unorganized mass of individuals, having, as Bluntschli says,[3] "no collective personality," and are enforced by unformulated penalties, they seem, nevertheless, to exhibit the capital marks of commands as these are stated in the Austinian analysis. They are the desires of the generality of certain groups of persons concerning the observance of acts and forbearances by members of those groups. These desires, though often receiving no formal promulgation, are manifested so clearly that the persons whom they affect are generally better acquainted with them than the average citizen is with the contents of large portions of the positive laws of his own commonwealth. Moreover, the sanctions of the laws of public opinion are inflicted by those whose desires have been contravened, for the purpose of enforcing obedience; and in point of effectiveness, as Locke[4] has shown, they not seldom have a decided advantage over the sanctions annexed "to the laws of God and the magistrate."

Thus, while the law of the land and common morality both condemned duelling, the so-called law of honor strongly enjoined it in particular circumstances; and for many men the law of honor — in other words, of their particular class in society — had a stronger sanction than that of the commonwealth.[5]

[1] See Juris., pp. 188, 199.
[2] Legal Duties and Rights, p. 7.
[3] The Theory of the State (trans., 1892), p. 109.
[4] Essay on Human Understanding, bk. ii, ch. 28, § 12.
[5] Pollock, Essays on Juris. and Ethics, p. 311.

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Hence we conclude that the indeterminate character of their sources and the vagueness of their penalties, which avail broadly to separate the laws of opinion or society from positive law, are insufficient to exclude them from the category of commands, or to render them incapable of generating a species of true rights that are usually designated as moral rights.

VII.

We have now completed our task of comparing and contrasting with other kinds of law the law of the lawyer and of the tribunal, or positive law, as defined by the English school of analytical jurisprudence. But, inasmuch as the doctrines of this school have recently been the object of a trenchant criticism that has considerably weakened the authority once accorded them, the value of the foregoing discussion will perhaps be increased by a brief justification of our initial assumption that all positive law is a command of the sovereign, *i.e.*, the regular, established ruling element of the state. It will doubtless be admitted that, in effect, this undertaking will be accomplished when it is shown that such definition is fairly applicable to that portion of positive law which has been molded upon preëxisting custom and is non-statutory, or, in other words, to "customary law."

There is a general consensus of opinion that no rules for human conduct are positive law — law *par excellence* — unless they possess a quality of necessity, or an obliging power derived from a coercing activity that is proper to political organization. Thus, Kant seems to teach that even the juridical rules of pure reason are inchoate or "provisory" merely, until they are realized through a civil union as public compulsory laws.[1]

> Law [says Falck], defined in the objective or universal sense of the term, designates the body of rules (*normae*) that stand under the protection of the state, and they are at once distinguished in principle from other rules of conduct that stand either under merely ethical laws, or that may be observed from considerations of prudence, as well as from usages which are not obligatory.[2]

[1] See Philosophy of Law (trans. by Hastie), pp. 76–79, 164–165.

[2] Outlines of Jurisprudence (trans. by Hastie), p. 184.

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And Ihering asserts, with still greater emphasis, that

> only those rules set up by the community deserve the name of law which have force, or since, as we have seen, the state alone possesses the monopoly of force, which have the power of the state behind them.[1]

Even Puchta, who belongs to the class of jurists that go to the extreme in separating from the conception of law the notions of political organization and compulsion,[2] lays down that

> right is embodied in rules of action; it enjoins that something be done or left undone. The consciousness of right is, therefore, at the same time the will that what is conformable to right shall become a fact. . . . This will, however, needs an organ in order to be carried out in fact. And this organ in which the common will is embodied, and by which it receives its realization, is the power of government, through whose existence the people becomes a civil commonwealth or state.[3]

Now, it is just because customary law consists of rules that are protected, *i. e.*, applied and enforced by the sovereign of the state, or the sovereign's judicial and executive mandatories, and draws from this fact a measure, at least, of its necessity or obliging power, that such law falls under the category of law positive. To illustrate: The treatises of the "early English *prudentes*," headed by Glanville, are books of positive law, for the reason that they contain substantive rules and forms of practice that actually obtained under the royal judiciary system,[4] "and are evidence that cases have formerly happened in which such and such points were determined, which are now become settled and first principles."[5] On the other hand, why do we deny the name of positive law to such important customary rules as the following: The King of

[1] Der Zweck im Recht, p. 318, quoted by Lightwood, Nature of Pos. Law, p. 319.

[2] See Savigny, System, § 52; Windscheid, Pandektenrecht, § 37; Trendelenburg, Naturrecht, p. 90.

[3] Outlines of Jurisprudence (trans. by Hastie), p. 33.

[4] See Clark, Practical Jurisprudence, pt. ii, ch. x; Glanville, Tractatus de Legibus, prol.; Bracton, De Legibus, *etc.*, lib. i, pref.

[5] Blackstone, Commentaries, Int. § 3, p. 73.

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England must assent to any bill passed by the two houses of Parliament; British ministers must resign when they have ceased to command the confidence of the House of Commons;[1] no President of the United States shall be reëlected more than once; presidential electors shall not *really* elect? Simply because these conventions are not under the immediate or mediate protection of the sovereign power as such, and no judicial or executive agency would take notice of their violation.

But, systematically to administer a rule by applying it and punishing infractions of it, is to command it. Thereby the desire for its observance is signified by a very "sufficient sign of the will,"[2] and the presence of the power and purpose of constraining obedience to it is put quite beyond doubt. "In principle," says Clark, "I agree with Austin that all law administered by the magistrates of a community has necessarily an imperative character."[3]

The difficulty in recognizing that "common law" (whether suggested by customary rules, *i. e.*, "the law of opinion," by the civil and canon law, or by pure considerations of utility[4]) is virtually a body of commands emanating from political authority, seems chiefly due to the remarkable way in which judges, aided by lawyers, have veiled their legislative activity under forms of words expressive only of the application of existent positive law.[5] The marvel of the fiction is, not that it has misled the world at large, but that it has availed to hoodwink the professional legists themselves, the very class who originated and have since sedulously maintained it.

ASHEVILLE, N. C. CHARLES M. PLATT.

[1] Regarding the whole mass of these constitutional understandings from a strictly legal standpoint, De Tocqueville declared that "the English constitution has no real existence" (*elle n'existe point*). Œuvres Complètes, I, 166, 167.

[2] See Hobbes's definition of "civil law," Leviathan (Morley's Univ. Lib.), ch. xxvi, p. 123.

[3] Clark, Practical Jurisprudence, p. 168.

[4] As to the "suggesting causes" of judiciary law, see Austin, Jurisprudence, vol. ii, pp. 655, 656.

[5] See Maine, Ancient Law (3d Am. ed.), pp. 29–32.

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THE REVOLT AGAINST FEUDALISM IN ENGLAND.

THE existing electoral franchise in England is the outcome of three great measures of Parliamentary reform. The first of these Reform Acts, that of 1832, introduced uniformity into the electoral system, and gave votes to the middle classes. Hitherto there had been nothing approaching uniformity. The large cities in the North of England and in the Midland counties which had grown up with the era of manufacturing, were inadequately represented or not represented at all in the House of Commons. Of the old boroughs which were represented, in some the electors were corrupt in the mass, in others the elections were controlled by the government, and others still were nomination or pocket boroughs in the hands of the large landowners, who, in addition to dominating these rotten boroughs, largely influenced the election of members for the county divisions in which their estates were situated. Until after 1832, the House of Commons was therefore practically chosen by the landed aristocracy. The second of the Reform Acts was passed in 1867. It bestowed the franchise on householders in the boroughs, thus enfranchising the working classes in all the large towns. The last act of the series, that of 1884, enfranchised all the small householders in the counties — the working classes in the rural districts, whose political position had been left untouched by the acts of 1832 and 1867.

Each of these Parliamentary Reform Acts was followed by a quickening of political life in the country, and by measures in Parliament which are landmarks in English history. After the act of 1832 came the new Poor Law, the Municipal Corporations Act and, a little later on, the repeal of the Corn Laws. The first of these measures closed the dismal period in Poor Law history which extended from 1760 to 1834, and culminated in the terrible and wide-spread scandals exposed by the royal

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commission of 1833. Under the act of 1834 the country was divided into union districts, and a system of poor relief was established which is practically uniform all over the country. It is administered by guardians, elected by the people who pay poor rate, and is checked and controlled by a powerful government department in London, which has had several titles since the act of 1834, but which since the early seventies has been known as the Local Government Board. The second of the great measures following the Reform Act of 1832, the Municipal Corporations Act of 1835, put an end to scandals in municipal administration which were almost on a par with those that had been connected with Parliamentary elections prior to 1832. This is the act under which all the incorporated towns in England now enjoy their extensive rights and privileges.

After the Reform Act of 1867, and before that of 1884, came the acts which established the present system of elementary education in England, several measures for the relief of Nonconformists, the abolition of purchase in the army, the reform of the civil service, and two Land Acts for Ireland.

Less than nine years have elapsed since the first general election after the Parliamentary Reform Act of 1884. Since that election, when for the first time the working class in the rural and mining districts went to the polls to vote for Parliamentary candidates, Ireland has largely monopolized the mind of the country and the time of Parliament. But notwithstanding the prominence of the Irish question and the extent to which it has harassed and embarrassed both of the old political parties, there has been in the country the same quickening of political life as followed the acts of 1832 and 1867; and while the County Government Act of 1888 and the Free Education Act of 1891 are the only great measures as yet on the statute book to mark this quickening, the direction in which the new activity is tending is everywhere apparent.

Much of this political activity is against what remains of the old feudalism, or, to put it more definitely, the power of the landlord in county, municipal and national government. This

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movement has received an immense impetus from the creation of a new democracy by the Reform Act of 1884, but the movement is much older than that act. It showed itself between the act of 1832 and that of 1867. The first Reform Act itself was, in fact, the pioneer of the movement. It was followed by the repeal of the Corn Laws. This was an attack upon the economic rather than upon the political power of the landlords; but it worked in both directions, and with the decline in the value of farming lands which followed more or less closely on the repeal, the landlords lost to some extent the very complete control they had hitherto possessed over the votes of their tenantry, although this control was partially maintained until after the Reform Act of 1884. Since then, however, it has become of little value, as the votes of the tenant farmers in most of the county Parliamentary divisions are now more than counterbalanced — in some divisions entirely overwhelmed — by the votes of the laborers, the artisans and the village shopkeepers, who vote as a class with the political party to which the landowners and the farmers are opposed. Other movements, aimed more directly at the political position of the aristocracy than was the abolition of the Corn Laws, had before 1884 deprived the aristocracy of the control of the civil service, and greatly weakened their hold on the army, the navy and the militia. The system of competitive examination had been adopted in connection with all these services, with the result that since 1870 the middle classes have enjoyed the largest share of the appointments in the civil service, and to some extent have shared with the landed classes the appointments in the army, the navy and the militia.

Up to 1885 the battle against the political power of the landed classes and against class privileges was waged by the middle classes, and mainly in their interest. Since 1885 the new democracy has been very generally engaged in the contest, and the vigor with which it is waging the battle, and the number of points at which it has attacked and is still attacking what remains of the old feudalism, form a most significant feature of contemporary English politics. The platform dis-

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cussions in the constituencies and the debates in the House of Commons, as well as the bills introduced by private members and those introduced and promised by the government, all show the trend of the new political activity. The Newcastle Program is an outgrowth of the movement; but the movement is one of which the Radical Party has not now a monopoly. It was a Conservative government which passed the first act of Parliament assailing the power and privileges of the landed class in county government.

Until 1888, the humbler dwellers in the rural districts had no more voice in local government than they had prior to 1884 in the election of members of the House of Commons. Their middle-class neighbors had elected the county members to Parliament; while the county magistrates, who were and are still exclusively of the landowning class, had enjoyed the entire monopoly of local government, and had controlled county affairs in entire freedom from responsibility to constituents, and with total indifference to the criticisms of the middle and working classes, who were powerless to depose them. For years before the Parliamentary Reform Act of 1884 both Liberals and Conservatives had promised to give all householders in the country districts the same rights and privileges in local politics as were enjoyed by householders in the boroughs under the Municipal Corporations Act of 1835. Popular representative government for the counties was one of the issues on which Mr. Gladstone carried the general election of 1885; and had it not been for his sudden conversion to home rule, and the defeat and break-up of the old Liberal Party which his Irish bills of 1886 brought about, there is no doubt that he and his supporters in the House of Commons would soon have turned their attention to this matter. But the election of 1886, which followed Mr. Gladstone's defeat in the House of Commons on the Home Rule Bill, returned the Conservatives and Unionists to power with a majority of nearly a hundred over the combined forces of the Gladstonian Liberals and the Irish Nationalists. As soon, then, as a session could be spared from the demands of Irish business, the

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Unionist government took in hand the work of setting up a democratic system of local government for the counties of England and Wales. After nearly an entire session devoted to the discussion, the County Government Act of 1888 was passed.[1]

The measure is admittedly not so radical nor so wide in its scope as it would have been had the Liberals introduced it, or even had they had their way when it was in committee in the House of Commons. The county council, the elective administrative body created by the act, does not enjoy the same extensive powers that a great municipality like Manchester or Birmingham enjoys under the Municipal Corporations Act of 1835 and the more recent measures dealing with local government in towns and cities. For instance, a county council, unlike a town council, has not complete control of the local police force. Its control over the police is shared by the county magistrates, who are appointed by the lord chancellor. The act is, however, an exceedingly liberal measure when one recalls the system of county government which existed prior to 1888, and also the fact that the act was carried through Parliament by a Conservative government of which Lord Salisbury was the head. It is, in short, one of those recent measures, like the Free Education Act of 1891, and the amendments to the Factory Acts, passed in the same year, which show that, notwithstanding the type of old Toryism represented by the present leader of the Conservative Party, the party itself now largely occupies the ground held by the Whigs until a few years after the second Parliamentary Reform Act, when, as has been admirably expressed by a writer in a recent issue of the *Quarterly Review*, it was "their mission to hold the balance between reaction and revolution, and ensure the safety and finality of progressive legislation, by guarding it against popular precipitancy."

At a stroke the act of 1888 displaced the old system of county government by the nominated few. It deprived the

[1] [On the questions involved in this act, *cf.* POLITICAL SCIENCE QUARTERLY, III, 310 (June, 1888).—EDS.]

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county magistrates of nearly all the administrative functions they had hitherto exercised in quarter sessions, and left them only the administration of summary justice, the licensing of public houses, a share in the administration of the poor law and a partial control over the county police. It was thus the first act passed after the extension of the Parliamentary franchise in 1884 which seriously curtailed the privileges of the landed classes in connection with local government. The Parish and District Councils Bill which is pending in the House of Lords at this writing, is intended to fill out and perfect the act of 1888. But after that act, so far as local administrative duties were concerned, little was left to the landlords of which further legislation could deprive them. The latest movements against the class concern the privileges which it enjoys, through the office of county magistrate, in dispensing justice and in administering the poor law. The agitation against the landlord on the bench, although taken up by the democracy, has for its object the removal of what after all is mainly a middle-class grievance. The other matter is the outcome of a general movement of the new democracy for some overhauling and reform of the poor law.

To make intelligible the demand for reform in the mode of appointing county magistrates, it is necessary to remember that in England summary justice is administered by three classes of magistrates: (1) Stipendiaries in the large cities; (2) borough magistrates in all the incorporated towns; and (3) county magistrates who exercise their functions in the rural districts, and at quarter sessions in the county towns.

In the boroughs, the mayor by virtue of his office is always a magistrate, and presides at the sitting of the borough police court. His colleagues on the bench are professional men, manufacturers and tradesmen, and occasionally workingmen, who have been appointed by the lord chancellor. These men are usually appointed through local political influence. They are not supposed to be learned in the law, nor is it necessary that they should be so. They only need to be men of high character, integrity and common sense. To each borough

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bench is attached a clerk. He is a lawyer, who holds his office during good behavior and is always in attendance at the sittings of the court to advise with the bench. There is no salary attached to the office of borough magistrate. All the recompense is the distinction among his neighbors which a place on the bench gives to a man. A seat on a borough bench is practically open to every man holding a prominent and respected position, and a man of this character who desires it, sooner or later receives the honor. In the long run neither his politics nor his religion nor his origin stands in his way. If his party is out of power one year, it may probably be in power the next, and then his political-friends will see that he receives the coveted honor at the hands of the lord chancellor.

Since the County Government Act of 1888, the duties of county justices, who form the third class of magistrates, have been very similar to those of the borough magistrates. Formerly, as has been explained, they had entire control of all county business. Now they administer summary justice in the petty sessional courts in the same way as borough magistrates. But in addition to this they share with a committee of the popularly-elected county council the management and control of the county police force; and each county magistrate is also, by virtue of his office, a member of the board of guardians for the relief of the poor in the union in which he lives. In these two particulars the duties of the county magistrates exceed those of the borough magistrates. In the boroughs, a watch or police committee, elected from and controlled by the town council, has the management of the borough police force; and the borough magistrates, as such, have no duties in connection with the poor law, although they may be elected poor law guardians in the ordinary way.

Furthermore, in addition to the difference in the duties and privileges of unpaid magistrates in the boroughs and in the counties, there is a marked difference in the mode of their appointment. The county magistracy is the older body, and has always been the more exclusive. Magisterial benches in the boroughs, as they now exist, date only from the Municipal

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Corporations Act ; while county benches date from the time of Edward III, and the office of county magistrate is governed by legislation and by traditions and customs of some antiquity. A statute of 1327 sets forth that magistrates are to be "of the most worthy, with some learned in the law." For four centuries the law did not insist on a property qualification for county magistrates, but in the time of George II such a qualification was imposed. This qualification and the circumstances attending the appointment of county magistrates have for generations past made the county benches practically close corporations. The laws regulating the matter are good examples of the exclusive care of the landed aristocracy, in the heyday of their power before 1832, for their own political and social advantages and privileges. As these laws now stand, no man can be nominated to the county bench unless he has a net income of £100 a year derived from landed property, or lives in a house assessed to imperial taxation at £100 a year. Nominations are made by the lord lieutenant of the county to the lord chancellor, and the lord lieutenant seldom if ever makes a nomination except at the suggestion of a man who is already a magistrate, or at the instance of a county bench acting through its chairman or its clerk. For generations it has been the etiquette of these benches that no man who has been in retail trade is to be appointed a county magistrate. There is no law to this effect, but long usage has settled it ; and no man who has grown wealthy in retail trade, no matter what his landowning or his rating qualifications, his standing in the community or his integrity and ability, may aspire to the county bench. It is almost the same with a man who is a Non-conformist and a Radical in politics. Church and chapel still socially divide people in provincial England, and nowhere is this division more marked than in the small county towns. The squirearchy is Episcopalian and Tory almost to a man. Socially, the squire has little to do with his Radical and Non-conformist neighbor ; and, accordingly, Radicals and Non-conformists have been kept off the county benches almost as completely as the men who have grown rich in retail trade.

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One of the results of the quickening of political life in the rural districts, as has been stated, is a movement for the reform of this antiquated method of appointing county magistrates. The Radicals are agitating for two changes. First they are demanding that the landed-property and tax-paying qualifications shall be abolished, and that any fit resident in a county, as is now the case in a borough, shall be eligible for a place on the county bench. In the second place, and with a view to breaking down the close corporations which now exist, the Radicals are demanding that the lord lieutenant shall no longer have the duty imposed upon him of submitting names to the lord chancellor; but that the latter official shall appoint county magistrates immediately, as he now appoints those on the borough benches. Early in the Parliamentary session of 1893 a resolution was carried by the Radicals in the House of Commons calling upon the lord chancellor to act in this manner. But a resolution has not the effect of law. Little has been done by the lord chancellor in the way of acting upon the resolution. Deputations have waited upon Lord Herschell, the present incumbent, to urge the need of the change; but until the resolution has been embodied in an act of Parliament no great change is likely to be made.

Simultaneously with the agitation against the old mode of appointing county magistrates, there has arisen the demand that these magistrates shall no longer be members of the boards of guardians solely by virtue of their office. Property has always had a full share in the administration of the poor law. When the system was remodeled in 1834, the constitution of the local poor law boards was so devised that, in the elections by the ratepayers, voting power was proportionate to the amount paid in rates to the poor law relief fund. In this way landowners and landlords have always been able to determine the constitution of a board of guardians. All householders who pay poor rate vote at the annual election; but the ratepayers who have only one vote are easily out-voted by those who have half a dozen. As an additional safeguard to property, for nearly sixty years prior to November, 1892, the members

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of the poor law boards were allowed to fix their own rating qualification. The act of Parliament only stipulated that the qualification for a guardian should not exceed an assessment of forty pounds a year. Otherwise it was left to the Local Government Board to fix the qualification in each union, and until quite recently the Local Government Board was always as accommodating to the guardians as the lord lieutenants and the lord chancellors have been to the county magistrates. Each board of guardians determined that such and such a qualification was a convenient one in their union, and the Local Government Board issued an order confirming the recommendation of the guardians, and giving it the force of law.

Within the last few years workingmen have been finding their way into town councils and school boards as well as into the House of Commons. About 1890 they began to turn their attention to the administration of the poor law and to the boards of guardians — but only to discover that, while they might be elected to town councils and to Parliament without reference to their rating qualifications, they were in most places debarred from seats on boards of guardians owing to the fact that they lived in small and inexpensive houses. An agitation for reform was started. It was vigorously pushed during the general election of 1892, and as soon as the Liberal government came into office, an immediate change was demanded. The government gave way, and one of the first orders issued by Mr. H. H. Fowler, the new president of the Local Government Board, was one fixing the qualification of poor law guardians at a rating assessment of five pounds per annum. This assessment was intended to include all workingmen householders. It at once broke down the barriers against workingmen as poor law guardians, and was another blow at the power and privileges of the landed and the property-owning classes in local government.

This concession to the demands of the new democracy has been quickly followed by steps toward the realization of their ideas on the other important points of poor law politics. The Parish Councils Bill, at this writing in the House of Lords,

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abolishes plural voting and non-elected guardians. These changes, if finally adopted, will sweep away the last of the old defenses with which property surrounded its position, and the employment of the ballot at poor law elections, which is to accompany these reforms, will put the administration of the poor laws entirely into the hands of the democracy.

The reform or abolition of the House of Lords is a cry which dates much further back than the Reform Act of 1884. It has been strengthened by the enfranchisement of the rural democracy; but it has been made clear, by the failure of the movement against the Lords which followed their rejection of the Home Rule Bill, that much will have to happen before the "mending or ending of the House of Lords," to quote the phraseology of the Newcastle Program, is embodied in the Queen's Speech at the opening of a Parliamentary session.

It is not alone the political privileges of the landed aristocracy that are at the present time under attack. The economic position of the great landlords, as it has been sustained by the law, is also being assailed at several points. One of the most pressing demands of the present time comes from the tenant farmers, who are objecting to rents based rather upon the social needs of the landlord than upon the agricultural value of the land. English farmers are generally Conservatives, and hitherto have voted with their landlords; but now, as the evidence taken by the royal commissions on land tenures and agricultural depression in Wales and in England shows, farmers are adopting the Radical cry of land law reform.

As long as the landowners were supreme in Parliament, all legislation affecting landlords and tenants was exclusively in the interest of the landowners. After the Parliamentary Reform Act of 1867, there were two or three attempts at legislation in the interest of the farmer. The first of these was in 1875, when Lord Beaconsfield's government passed the Agricultural Holdings Act. This, however, was merely a permissive measure, and landlords all over the country at once inserted clauses in their annual agreements with tenants contracting themselves out of its working. The next measure

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in behalf of the tenants was the Ground Game Act of 1880. It was intended to give farmers a right to shoot hares and rabbits on their land, notwithstanding clauses in their leases and the penal provisions of the game laws. Little advantage has accrued to the tenant farmers from this measure, as on most large estates the act has been practically inoperative. A few years later the Agricultural Holdings Act of 1875 was amended by a Liberal government, and made compulsory. Under the provisions of the amended act, a farmer, at the expiration of his tenancy, may claim compensation for unexhausted improvements, the value of these improvements being estimated according to their worth to the incoming tenant. But this measure, like the Ground Game Act of 1880, has been of small practical value to the tenant farmers. In many counties it is as inoperative as the act of 1875, since much red-tape surrounds its working, and the tenant farmer who makes a claim for unexhausted improvements stands in dread of the landlord and his inevitable counter-claim for dilapidations, which is always filed after the final statement of the tenant's claim has been made.

The grievances of tenant farmers in reference to the drastic Game Laws which were passed between 1828 and 1863, and are still in full force, the law under which the landlord's claim for rent takes priority over the claims of all other creditors, and especially the law of distress, have led to attempts in some parts of England, more particularly in the North, to form a tenant farmers' party in the country and in the House of Commons, which, while radical in its demands for legislation, shall seek to be independent of both the existing parties, and by adopting tactics like those by which the Irish Nationalists succeeded in bringing home rule to the front, compel the government, whether Liberal or Conservative, to accede to their demands. They aim to abolish the laws of entail and distress, and to establish a land court to settle rents, questions of tenure, and disputes between outgoing tenants and their landlords as to the value of unexhausted improvements. In the present condition of English politics, when narrow majori-

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ties in the House of Commons must be the rule, fifteen or twenty members of the house, putting forward land law reform on tenant farmers' lines as their sole mission at Westminster, could soon bring a government to terms. The outlook for the establishment of such a party with such a mission is, however, not very bright. English tenant farmers are not yet educated up to political methods like those by which the Nationalists obtained control of the House of Commons; they are not the people to make much headway with a political movement of this kind. They are easily headed off, as is adequately proved by the St. James's Hall meeting in December, 1892. That gathering had its origin with the tenant farmers; but the landlords and the land-agents readily obtained control. They started cries of protection and bimetallism as a set-off to the demand for land law reform, and it is doubtful whether the tenant farmers' movement was not hindered, rather than advanced, by the agitation which culminated in the London Conference at St. James's Hall, the resolutions in favor of protection and bimetallism, and the impracticable scheme which was then put on foot by Lord Winchilsea.

The tenant farmers' movement, however, is an actuality, although as yet without much obvious political force, and if ever there is a combination between the tenant farmers and the laborers in support of Parliamentary candidates absolutely pledged to land law reform, — and the combination is not an improbable one, — something will have to be done, no matter whether a Liberal or a Conservative government is in power.

In the great towns the democracy is realizing that land does not pay its fair share to public charges — that the ground landlords obtain all the advantages from the growth and improvement of cities, and pay little if anything toward municipal burdens. Hence the agitation in favor of taxing ground values, which, it is urged, would not only compel the ground landlords to contribute towards municipal expenditures that enhance the value of their property, but would also do away with a system which puts a premium on overcrowding.

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The demand for the taxation of mining royalties, which developed with great suddenness in the mining constituencies of the North of England after the Parliamentary Reform Act of 1884, lost much of its original force when the royal commission, which thoroughly investigated the subject, presented its report in the session of 1893. The commission recommended no legislation on the subject of mining royalties, and the evidence and the conclusions which it presented upset some fallacious ideas which had existed in the popular mind in respect to the amount of the royalties and their effect on English industries. The royalties were much less than had been generally believed. The royal commission ascertained that in 1889 they averaged fourpence three farthings per ton, and it was not able to report that they were detrimental to the mining industry. The great coal strike which lasted from August until November, 1893, served, however, to bring the question of royalties to the front again. It is now coupled with a demand for the nationalization of all minerals—a demand which will soon play a part in the general assault on the economic position which the landed interest secured for itself in the days when it was in complete control in Parliament.

EDWARD PORRITT.

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BRITISH LOCAL FINANCE.

PART I.

ENGLAND AND WALES.

CHAPTER I. *Historical Introduction.*

THE history of English local finance yet remains to be written, Mr. Dowell's admirable *History of Taxation and Taxes* being confined to the impositions of the central government for national and imperial purposes. Without attempting an exhaustive survey, a brief historical sketch may be found useful in this place.

Local taxation, like local government and many other English institutions, had its beginnings in Saxon times. The privileges of the burgesses of the numerous boroughs of the later Saxon and early Norman reigns were conditional upon the paying of scot and the bearing of lot.[1] "Scot" appears to have been the local tax of the place, afterwards known as town ley, and still later as the "constable's tax"; "lot" was the personal service of various kinds, civil and military, required of the free inhabitants. The inhabitants of most of the boroughs were tenants of the royal demesne, and in the twelfth and thirteenth centuries, collectively in each borough, paid an annual fee-farm rent to the king, known as *firma burgi*, or *auxilium burgi*.[2] This burden was apportioned among the burgesses by self-assessment, and no doubt formed part of the local scot or tax. Another of the purposes to which the tax was applied was the payment of the fines for offenses, imposed under the system of "pledges" by the local community for the good behavior of the individuals composing it.[3] It was doubt-

[1] Merewether and Stephens, History of Boroughs, introd. p. 13 and pp. 65, 271–2, *etc.* The tax levied by the commissioners of sewers is called a "scot" to this day. See *post*, pp. 79, 80, 90, 91.

[2] Dowell, History of Taxation, vol. i, pp. 16 and 49.

[3] Merewether and Stephens, pp. 273–4.

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less also used for raising such funds as were required for the maintenance of highways, bridges, embankments, water-courses, town walls and, later on, the "wages" of members of Parliament. Outside the boroughs, these expenses were defrayed by a threefold system of town rates, hundred rates and county rates, applicable respectively to the townships, hundreds and counties.[1] The town ley or rate, however, was imposed not only for township purposes, but also to furnish the township quotas of the hundred and county rates and, not unfrequently, of the national taxation. For several centuries the mode of assessing the individuals within the township for contribution to the old town rate was regulated solely by custom, no statute for the purpose having been enacted until 1662.[2] But there is good reason for believing that the standards of ratability adopted for the national taxes were applied also to local taxation. From the beginning of the thirteenth to the end of the sixteenth century the basis was usually a rough valuation of movables, but the enumerated articles consisted chiefly (even in boroughs) of farm stock.[3]

The local taxation for civil purposes was accompanied by an ancient ecclesiastical tax called the church rate. This was assessed and levied parochially by the churchwardens, and was probably collected in the churches at certain of the annual festivals. This tax has been traced back to 1189, but may be older; and it has always been assessed and levied according to custom.[4] Owing to the unequal and often excessive area of the parishes, the church rate remained for several centuries the only parochial tax.

A tax called the sewers rate, for the protection of districts liable to floods and for kindred purposes, was imposed in certain affected places as early as 1427, and is still levied under the authority of a statute of 1532.[5] This has been supplemented

[1] Report of Poor Law Commissioners on Local Taxation, 1843, pp. 5–10.

[2] *Ibid.*, p. 6.

[3] Dowell, vol. i, p. 231. *Cf.* Seligman, The General Property Tax, p. 47 *et seq.*

[4] Report on Local Taxation, 1843, p. 10.

[5] *Ibid.*, p. 11. See also Report of Select Committee on Local Taxation, 1870, pp. 292 and 296.

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by a general sewers tax imposed in 1841, and a land drainage rate imposed in 1861. We learn from Mr. Dowell that paving rates began about 1477;[1] but they appear to have been confined, until modern times, to a few of the larger cities and boroughs. An act passed about eighty years later required the repair of the highways to be made by the parishioners' own labor, or through the gratuitous use of their horses, — a method which remained largely in operation in rural districts until the present century. In 1530 and 1531 the county justices were empowered to levy separate direct taxes for the repair of bridges and the erection of gaols, and to appoint collectors of their own, instead of apportioning the burden among the hundreds and townships. This was a new departure in local taxation, and would appear to have been abandoned in practice later on. But it affords an indication of the growing influence of the county justices, whose autocratic rule henceforth superseded the ancient popular forms of county government.

During the fourteenth, fifteenth and sixteenth centuries the relief of the poor had engaged the attention of the legislature at intervals, but no general taxation for the purpose was considered necessary. We learn from the *Mirrour of Justice* (chapter 1, section 3) that "it was one of the ordinances of Edward I that the poor should be maintained by parsons, rectors of the church, and by the parishioners, so that none of them die for want of sustenance."[2] In the fifteenth year of Richard II an act was passed providing for the relief of the poor out of the fruits and profits of the living of each parish church;[3] and until the dissolution of the religious houses voluntary measures were found a sufficient supplement to the obligations imposed on the clergy. The cessation of the daily doles at the gates of the monasteries was followed by a series of legislative efforts to systematize the giving of weekly alms by the parishioners; but it was ultimately found necessary to levy a rate in every

[1] *Op. cit.*, vol. i, p. 126.
[2] Castle on Rating, p. 1.
[3] *Ibid.*, p. 2.

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parish throughout the land, and the act 43 Elizabeth, chapter 2, was passed in 1601 with this object. By this it was enacted that the churchwardens and certain other persons selected annually, called overseers, should

raise, weekly or otherwise (by taxation of every inhabitant, parson, vicar and other, and of every occupier of lands, houses, tithes, coal mines, or salable underwoods in the said parish, in such competent sum or sums of money as they shall think fit) a convenient stock of flax, hemp, wool, thread, iron and other necessary ware and stuff to set the poor on work. And also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind and such others among them being poor and not able to work, and also for the putting out of such children to be apprentices, to be gathered out of the same parish according to the ability of the same parish.

The act also gave power to the justices to raise moneys elsewhere in the same hundred or county to assist a parish not able to support its own poor. No guidance was given to the overseers as to the mode by which the liability of the individual inhabitants should be determined, nor as to the standard by which their "ability" should be measured. This was probably only another way of making applicable the rules and methods already established by usage for raising both national and local taxation. The standards of ability then in use were those known as "lands" and "goods," the assessing authority being at liberty to take that one which would give the highest assessment, but not both.

But these standards were applied in a very loose fashion. The taxpayers were "put up or lowered without any reasons that could be reduced to a rule."[1] Under the Commonwealth an era of somewhat greater strictness and regularity in the assessment of taxes began, and we find for the first time evidence of a more general assessment on the basis of rents, both of lands and buildings, as well as of personal estate.[2] There is little doubt that this increased precision extended to the assessment of the poor rate and other local taxes, and that

[1] Dowell, vol. ii, p. 5.
[2] *Ibid.*, vol. iii, p. 73.

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it was at this time that the standard of assessment began to crystallize into one of rent or annual value, as it is at present, the assessment of urban householders on this basis being substituted for that in respect of stock-in-trade. Mr. Castle, in his work on *Rating*, says (page 11):

> The act of Elizabeth refers to personal as well as to real property; but either from the difficulty of assessing personal property, or from the still popular principle of throwing all burdens upon land, a custom sprang up in many parishes of not assessing this class of property. All personal property is now declared by statute[1] to be not ratable. With this exception, the act of Elizabeth remains untouched in principle at the present time.

This passage is very misleading. Personal property is not mentioned in the act of Elizabeth, and was never brought *generally* within the scope of its operations by the practice of the poor law officials or the decisions of the judges. It was not, indeed, until 150 years after the passing of the statute of 1601 that the liability of inhabitants to be rated for personal property was agitated in the courts of law.[2] The later decisions established the liability of inhabitants to assessment for poor rates in respect of such personalty as complied with the conditions of being local, visible and profitable; which, clearly, was a wholly different thing from taxing personal property in general. The effect of these decisions was that stock-in-trade was for a time rated in the clothing districts of the south and west of England (very greatly to the detriment of those districts) and a few other places; but throughout the greater part of the country the overseers continued to rate real estate only,[3] until the act of 1840 expressly exempted personalty.

As stated by Mr. Castle, the Poor Law of Elizabeth has been singularly little affected by subsequent legislation; but its administration has been the instrument by which some economic questions of the first order have been practically illustrated on a great scale. Down to 1747, the date of our

[1] 3 and 4 Vict., c. 89 (1840).

[2] Report on Local Taxation, 1843, p. 21; Report on Burdens on Land, 1846, p. 244.

[3] Report on Local Taxation, 1843, pp. 21 and 22.

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earliest poor-relief statistics, the administration of poor relief appears to have been conducted with prudence and economy. A reference to Table II in the appendix (*infra*, page 109), will show that the average cost, which was then probably not more than 2*s*. per head of the population, afterwards rose rapidly and continuously, until in 1817 it reached 13*s*. 3*d*. per head.[1] Grave abuses, which sprang up and developed with alarming rapidity, had well-nigh pauperized the mass of the English people, when the Poor Law Amendment Act of 1834 stayed the evil. The chief modifications effected by this act were the grouping of the less populous parishes into "unions" of considerable area or population, and the transfer of the business of relief and administration from the parochial overseers to boards of guardians acting for the unions. The most populous single parishes were granted the status and machinery of unions, and treated as such. The liability of each parish in a union for the cost of the maintenance of its own poor was continued until 1865, when the charge was cast on the union as a whole. The poor rates are, however, still levied by the overseers, as of old, and the system of valuation, assessment and levy existing for this purpose will be dealt with in a separate chapter. The subsequent financial progress of the poor rate will be shown in the statistical tables which follow.

The unit of area first adopted for poor-rate assessment purposes was the parish, evidently in continuation of the voluntary forms of taxation, in the church and by the officers of the church, which had previously been in operation for this object. This was the first time the parochial area had been adopted, except for church rates, and the inconveniences arising from the excessive size of the parishes in the north of England soon led to its partial abandonment. By an act of 1662 permission was given for the substitution of the township where found needful, and this area has since been and is still very generally in use in the northern counties. By the same act the constable's tax

[1] Burdens on Land Report, 1846, Appendix no. 24. See also, generally, Report of Poor Law Commissioners, 1834.

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was placed under statutory regulation, and the persons and property assessable to it were prescribed as those charged to the poor rate. The importance of this ancient tax gradually declined, and as the purposes for which it was originally levied became obsolete or were otherwise provided for, the tax itself fell into disuse.[1] Of the other ancient local taxes, the hundred rate gradually became merged in the county rate, as the purposes for which it was levied were undertaken by the county authorities or became obsolete ; but the hundred is still liable to be rated for the payment of compensation for damage resulting from riot.[2] The county rate, on the other hand, has not only been applied to new purposes, but has swallowed up a number of subsidiary rates, imposed upon the inhabitants of the counties between the middle of the sixteenth and the middle of the eighteenth centuries. The act 12 George II, chapter 29, consolidated these in 1739, and directed that the general county rate should be paid by each parish or township in one sum, to be taken out of the poor rate, or raised in like manner thereto.[3] This is the present practice. Church rates maintained their independent existence, but with gradually increasing difficulty, until 1868, when the power of enforcing payment was withdrawn by Parliamentary enactment, save in certain cases where loans were secured upon them. As these loans have been nearly all repaid, the remaining church rates have been almost wholly extinguished, and the tax is now virtually a thing of the past.[4]

By an act of 1691 highway rates were for the first time authorized by statute, the tax for the purpose being imposed as an addition to the poor rate. It would seem that notwithstanding this enactment the older practice[5] commonly prevailed for a century longer ; but in 1773 the county justices were empowered to enforce a more adequate performance of the

[1] Report on Local Taxation, 1843, p. 6; Report of Select Committee, 1870, p. 294.

[2] Report of 1870, pp. 292 and 299.

[3] Report of 1843, p. 9; Report of 1870, p. 297.

[4] Report of 1870, p. 296.

[5] See *ante*, p. 80.

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parochial duty of maintaining the highways, and rates for the purpose became more general. Statute labor in lieu of payment of rates was not entirely abandoned until the middle of the present century. Sir John Sinclair estimated the amount of the highway rates in 1803 at £100,000, but by 1817 the amount had risen to £1,415,000.[1] The subsequent progress of this tax may be seen by reference to Table II in the appendix. From 1815 to 1865 the highway rate was levied separately from the poor rate, and it is still so levied to the extent of about one-half of the total sum raised. The remainder is collected with the poor rate.[2]

The present century has been prolific of new rates, among the number being the militia rate, 1802, burial of the dead rate (bodies cast ashore by the sea), 1808, gaol fees rate, 1815, shire halls rate, 1829, and the lunatic asylums rate, 1829, — all of which were subsidiary to the county rate, and have, in practice, become merged therein. The workhouse building rate, 1834, and survey and valuation rate, 1836, have in like manner become incorporated with the poor rate. The imposition of the borough rate and borough watch rate in 1835 was incident to the reform of the municipal corporations upon a representative basis, after a period of usurpation, abuse and decline dating back to the evil times of the Tudors and Stuarts. The Municipal Corporations Commission of 1835 reported that many corporations possessed revenues

> from lands, leases of tithes and other property; from tolls of markets and fairs; from duties or tolls imposed on the import and export of goods and merchandize; from quay and anchorage dues, *etc.*; and from fees and fines.[3]

In several boroughs, rates were levied similar to county rates, but some had no revenues whatever. Owing to the debased character and oligarchical constitution of the municipal corpora-

[1] Goschen's Report on Local Taxation, 1870, pp. 8 and 71. See also Report on Local Taxation, 1843, p. 16, and Lord Monteagle's Draft Report on Burdens on Land, 1846, p. 19, from which it appears that one-third or more of this sum consisted of the estimated value of statute labor. *Cf.* Table II, *infra.*

[2] Report of Select Committee, 1870, p. 294.

[3] Vine, Municipal Institutions, p. 199.

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tions, no new duties were confided to them by Parliament for more than a century prior to the reform of 1835, such public works as were imperatively needed being entrusted to private persons or specially created commissions. Thus in 1684 an enterprising speculator, named Hemming, obtained exclusive authority to light the metropolis at night with lamps;[1] and the Watching and Lighting Act of 1833 created special authorities for the performance of these elementary municipal duties within the boundaries of the boroughs and elsewhere.[2] The county police rate, imposed in 1841, is still nominally a distinct rate; but as it is, like the county rate proper, collected as part of the poor rate, no machinery for its assessment or collection is required.

The progress of the rates referred to in the foregoing historical survey, so far as the figures are known to exist for the years selected, is exhibited in Table II of the appendix.[3] That table does not, however, cover the whole field of local finance. About the middle of the eighteenth century the badness of the main roads of England and Wales led to the creation of turnpike trusts, under which the trustees were empowered to levy tolls for the repair, improvement and maintenance of the roads placed in their charge. The system spread rapidly, the turnpike roads were greatly improved and large sums were levied in the form of tolls. In 1840 the sum so raised was £1,659,154,[4] and in 1843, £1,348,084;[5] but by 1868 the tolls had fallen to £914,492, and in 1890–91, to £2,353.[6] The introduction of railways so diminished the traffic on many of the roads that rates were required to supplement the tolls; and the latter have been practically abolished by the expiry and non-renewal of the trusts.

Prior to 1835 municipal corporations levied their revenues under the authority of charters and local acts, but no record

[1] Brodrick, Local Government (Cobden Club Essay, 1875), p. 25.
[2] Report of Select Committee on Local Taxation, 1870, p. 295.
[3] *Infra*, p. 109.
[4] Report on Local Taxation, 1843, p. 17.
[5] Lord Monteagle's Report on Burdens on Land, p. 20.
[6] Report on Local Taxation, 1893, pp. 94, 108.

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of the amounts so raised was kept for the whole country. There was, indeed, no comprehensive statute requiring the production of annual returns until 1860. Mr. Goschen stated that

> previously to 1841, neither receipts nor expenditure are chronicled in respect of any of the following branches of local administration: police; general sanitary improvement of towns; lighting, watching and paving; government of towns; sewage; drainage; and even in the more complete investigations undertaken in 1846, London rates are only entered to the extent of £82,000.[1]

He roughly estimated the rates of which no records were kept at £400,000 in 1817, and £600,000 in 1840.[2]

Table III of the appendix exhibits the extent, or rather the very narrow limits, of the information obtainable by the Poor Law Board in 1843, exclusive of poor, county, highway and church rates. Table IV shows the progress made in 1870. The latter furnishes the earliest view obtainable of the heavy modern taxation for sanitary and improvement purposes, which has so seriously augmented the burdens and indebtedness of urban localities, notwithstanding the relative saving effected under some of the older headings. Items 6, 7 and 8, amounting to over £3,000,000, are almost wholly of this character. The first of a series of acts relating to the public health and cognate matters, involving the levy of rates and the borrowing of money, was passed in 1848, and has been supplemented at short intervals down to the present time. The country has been mapped out into urban and rural sanitary districts, the authorities of which are invested with a multitude of powers and charged with a multiplicity of duties. Their expenditure has rapidly attained very large proportions (as will be seen later), and has, in urban districts, been met by the levy of rates, based upon the poor rate valuation but separately collected. In rural districts the sanitary authority is practically the board of guardians under another name, and the general expenses are met by a simple enlargement of the poor

[1] Report on Local Taxation, 1870, p. 9.
[2] *Ibid.*, pp. 12, 13.

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rate. The expenses incurred for the benefit of sectional areas are met by special sectional rates. In corporate boroughs the sanitary authority is usually the town council or a committee thereof; but as the greater part of London has no such council, various metropolitan authorities are either temporarily created or invested with temporary powers and duties. Since the creation of the London county council in 1889, a portion of the work has been taken up by that body. Within the small central area known as the City of London, the ancient unreformed corporation still exercises its authority in municipal matters, except as to main drainage, which is in the charge of the London county council. Outside of London and the corporate boroughs, the government of urban areas is entrusted to local boards or improvement commissioners; except that the police arrangements are left in the hands of the county authorities.

To the foregoing catalogue it is only necessary to add that the provision of cemeteries has, since 1854, been made a matter of civic concern, with the usual result of an additional rate;[1] and that the creation of school boards under the Elementary Education Act of 1870 has led to the imposition of a local tax of considerable weight in the metropolis and many other places. The rates for both of these purposes are, however, usually collected as additions to other local taxes. Many less important developments of local and municipal activity have been provided for by similar methods or by the simple enlargement of previously existing rates, and need not be enumerated here. The recent growth of the local burdens and the development of the local finances will be further exhibited in the succeeding chapters and in the appendix.

CHAPTER II. *The Existing System.*

We are now in a position to take a survey of the principal features of the system of local finance which exists in England and Wales at the present time. Table V shows that of a total receipt (exclusive of loans) amounting to £51,437,425

[1] Report of Select Committee on Local Taxation, 1870, p. 295.

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in the year 1890–91, £27,818,642 represented the yield of the rates, that is, of direct taxes levied in respect of the occupation of real property. Of the remainder £8,627,027 consisted of the revenues from gasworks, waterworks, markets and other undertakings, mostly of a remunerative, or partly remunerative, character; £4,724,340, of tolls, dues, fees, fines, *etc.*; £1,741,217, of rents and other receipts from property (including sales); and £7,181,010, of treasury subventions and allocated taxes paid out of or diverted from the imperial exchequer. Table VI shows the various classes of local authority to whom the expenditure of these sums is entrusted, and the amount expended by each class; and in Table VII we see the same expenditure classified according to the objects to which it is devoted. Finally, the amounts of the loans outstanding on the 25th of March, 1891, and the purposes to which they have been applied, are set out in Table X and complete the edifice. The total local debt on that date was £201,215,458.

Taking these sections in the same order, and reverting to the revenue from rates, an analysis of the total for 1890–91 will be found in Table VIII. It is, however, a matter for regret that neither Mr. Fowler's report nor the annual local-taxation returns furnish an analysis in the form adopted in Table IV, or a modification thereof. Many of the rates set out in Table VIII are "precept" rates; that is, rates levied by one authority in obedience to a periodical demand or precept from another authority. In those rural parishes which are embraced within highway districts the whole of the public rates may be, and often are, collected together under the general head of poor rates. In rural parishes not comprised in highway districts separate highway rates are made and levied by parochial surveyors of highways. In boroughs and other extra-metropolitan urban districts the rates are usually levied under the two main heads of poor rates and general district rates; but the lines of division are not uniform. Expenses which in some places are defrayed out of the proceeds of the poor rates are in other places met

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from the general district rates, and in yet other places are the occasion of special rates. In London the division roughly corresponds to that of the boroughs, but there are considerable differences of detail. The vestries and district boards raise the rates needed for most of the sanitary and improvement purposes, and also for the London school board. But the London county council also performs certain sanitary duties and undertakes improvement works, the expenses of which are defrayed out of the moneys raised as poor rates. The county rate, the borough rate, the school-board rate, the burial-board rate, the rural sanitary rate and the rural highway rate in highway districts are usually levied as precept rates.[1] In some cases the precepts are sent direct to the collecting authority, and in others through an intermediate body. Those which ultimately fall to be collected by the parochial overseers are either paid out of or collected with the poor rate,[2] and are included under that general title in both popular and official terminology. An analysis of the expenditure of the sum raised by the overseers in 1890–91 is given in Table I and shows that of the total of £15,563,794 more than one half was applied to purposes other than the relief of the poor.

By far the most important of the rates collected independently of the poor rate is the general district rate levied by the urban sanitary authorities,[3] with which may be included the rates of the metropolitan vestries and district boards and the commissioners of sewers in the City of London. This rate yielded in 1890–91 a revenue of about nine and one-half millions, exclusive of the £1,360,000 levied therewith in London for the London school board. No analysis of the expenditure of this large sum is published in a concise form, but the purposes to which it is applied include (1) street improvements, repair of urban highways, and street watering and cleansing; (2) sewerage and sewage disposal works; (3) public lighting; (4) dust and refuse removal; and (5) mis-

[1] Report of Select Committee on Local Taxation, 1870, pp. 291–300.

[2] *Ibid.*, p. 297, note to part 2.

[3] See *ante*, p. 87.

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cellaneous sanitary work. In many places some or all of the following purposes are added: (6) hospitals; (7) water supply; (8) fire brigades; (9) cemeteries; (10) parks and pleasure grounds; (11) bridges and ferries; (12) public libraries and museums; (13) markets and fairs; (14) baths and washhouses; and (15) artisans' and laborers' dwellings.

The remaining rates which are separately levied are the highway rate (except in highway districts);[1] the sewers, drainage and embankment rates, where such exist;[2] county and other rates, usually raised as precept rates, but separately collected in certain cases owing to the overlapping of areas and boundaries;[3] and certain special or peculiar rates levied under the authority of local acts of Parliament.[4]

The methods of valuation, assessment and collection pursued in the levying of rates will be more fully described in the next chapter.

The revenue from waterworks, gasworks, markets and cemeteries[5] is chiefly in the nature of the price of commodities or privileges sold or let. Against it must be set the expenditure by which this revenue is earned or otherwise obtained before the profit can be ascertained. This can only be imperfectly done by the use of the figures in Table VII, owing to the inclusion of the interest on loans payable in respect of such undertakings and properties under the general heading of "Payments in respect of Principal and Interest of Loans." It may, however, be taken as a fact that gasworks and waterworks are usually profitable undertakings, which yield a surplus revenue available for the relief of the local rates. Markets and cemeteries are much less uniformly sources of profit, the

[1] Report of Select Committee on Local Taxation, 1870, p. 294.

[2] *Ibid.*, pp. 210, 286, 292 and 296. These rates apply to lands only; see *ante*, p. 79; as to the sewerage of houses, see below, note 4.

[3] *Ibid.*, p. 297, note to part 2.

[4] These latter include public water rates and sewer rates payable by owners in certain towns. Sewer rates of this kind are applied to the sewering of new houses, which elsewhere is a charge on the individual owners.

[5] The charges for domestic supplies of water and gas are included under this head. Those for public water supplies and lighting are treated as rates and included under that head.

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deficits which result in a large proportion of cases being a charge on the public rates. With the exception of tramways and harbors the other undertakings classed in the same category in Table V are rarely more than partially reproductive.

The revenue from tolls, dues and duties includes market tolls and harbor dues, and a great variety of more or less analogous charges. With a few trifling exceptions there are no longer any taxes of the octroi class in England and Wales, the coal and wine duties in the City of London, which until 1889 formed an important exception, having now entirely ceased to exist. The city authorities still levy a metage duty of three-sixteenths of a penny per hundredweight on all grain brought into the port of London, which yielded a revenue of £18,634 in 1890.

The local revenues from property and investments consist chiefly of ground rents and other rents received by a small number of municipal corporations which are fortunate enough to be the owners of considerable landed estates; of rents of portions of municipal buildings and payments for the use of public halls, *etc.*; and of the interest and dividends on investments for sinking fund purposes.

The local revenues from Treasury subventions and allocated taxes have recently been so largely developed and augmented as to require a somewhat lengthy notice, and they will, therefore, be specially dealt with in a separate chapter.

The outstanding debt of the local authorities of England and Wales on the 25th of March, 1891, amounted to the large sum of £201,215,458. No complete statistics of the local indebtedness were compiled until recent years, and its growth cannot therefore be fully exhibited. In Mr. Fowler's recent report he gives a statement of the debts outstanding in 1868 which he has been able to trace. These amount to £43,813,000, of which no less than £18,899,000 is debited to harbor, pier and dock authorities; but he states that the list is known to be incomplete. The first year for which the official local taxation returns purport to give the amount of the local debt is 1874–75. In that year it is stated to have been £92,820,100. In 1879–80

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it had increased to £136,934,070, in 1884–85 to £173,207,968, and in 1890–91 to £201,215,458. The allocation of the loans to their respective purposes has only been accomplished in the returns for 1884–85 and subsequent years, but the figures for 1884–85 and 1890–91 in Table X will repay an attentive study.

Whilst the rapidity of the recent growth and the magnitude of the total of the local debt are, at first sight, somewhat alarming, there are reassuring facts which should also be borne in mind. In the first place, the greater part of the thirty-one and one-half millions owing in respect of harbors, piers, docks and quays is not secured upon the local rates, and is not, therefore, a public liability in the ordinary sense. Then, too, the debt on gasworks, waterworks, markets and cemeteries is usually secured primarily upon the revenues of these undertakings, and is only a charge on the rates to the extent to which those revenues may be found insufficient to meet the payments for principal and interest. As these undertakings are mainly commercial enterprises which were originally in private hands, and were then sources of considerable profit to the owners; and as their acquisition has been, in most cases, deliberately undertaken in the public interest; it is fair to assume that, even in those cases where a charge falls upon the rates, there is a balance of advantage to the community arising out of the greater excellence or the lower price of the supplies or conveniences obtained. In the great majority of cases the public management of gasworks is productive of considerable money profits, which are available partly for the redemption of the undertakings and partly for the relief of the rates. This is less generally, but still very largely, the case also with waterworks and markets; but cemeteries are at present a charge upon the rates in a large proportion of the cases in which they belong to the local authorities. This is chiefly due to the necessity for repaying a portion of the purchase money each year, and the present provision, as a matter of prudence, for enlarged needs in the future, owing to the growth of population and the closing of the churchyards.

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It is interesting to learn from Mr. Fowler's report that of the present total local debt £183,915,189 is owing by purely urban authorities; £13,393,410 by authorities partly urban and partly rural, and only £3,906,859 by purely rural authorities. From other detailed figures in that report we are enabled to deduce the fact that the bulk of the debt is, indeed, the outcome of a great development of municipal or other public enterprise in recent years, chiefly in the metropolis and the provincial boroughs. This spirit of enterprise is displayed, in a manner equally significant, both in the commercial undertakings from which profits may be looked for, and in those departments which are a recognition of unremunerative public duties. The total debt is almost equally divided between the two classes, and the portion applicable to the latter class will be seen to fall mainly under the heads of sanitation, education and public improvements. When it is remembered that the present generation is not only paying the interest but also repaying a large part of the principal of these loans, the determination of a self-governing people to incur the cost is an evidence of the development of public spirit in a highly admirable degree.

The aid of the national government in the raising of loans has been more or less available by the local authorities since 1792, when special acts of Parliament were passed authorizing loans by the Treasury for local purposes. In 1817 a body called the Public Works Loans Commissioners was constituted by statute for the regular consideration and grant of applications for loans for local public works of certain specified descriptions, and large sums have been advanced by the Treasury on their advice. But owing to the acceptance of as little as three per cent interest, and of insufficient security in certain cases, considerable losses have been sustained. Since 1876, the rates of interest have been advanced; and in 1887 a local loans stock was created, by which the advances of the government to the local authorities were distinguished from the remainder of the national debt. Up to that time £106,000,000 had, in all, been advanced throughout the United Kingdom; of which £57,200,000 had

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been repaid, £11,600,000 remitted as bad debts, and £37,200,000 remained outstanding.[1] The bulk of the existing local debt has been borrowed from private individuals under local acts of Parliament, and in the open market under the Local Loans Act of 1875. The periods formerly allowed for the repayment of local debt were often excessively long, extending in one case to 110 years; but recently a much greater degree of strictness has been exercised by Parliament and the government departments in requiring more rapid repayment of all fresh loans. On the whole, whilst the magnitude of the total local debt and of the sacrifices imposed by it upon the ratepayers is sufficiently serious, there is no ground for alarm. The very large present sacrifice entailed under the system of comparatively rapid repayment is in itself both a salutary check upon extravagance, and a guarantee of solvency which is likely to become increasingly operative as time goes on. The bulk of the present local debt is held at rates of interest ranging from three to three and one-half per cent, and is regarded by lenders as a secure investment.

Chapter III. *Rates: Valuation, Assessment and Levy.*

The local rates of all kinds are (with certain exceptions which will be referred to subsequently) charged to the individual ratepayers in the form of taxes, calculated uniformly at so much in the pound on the "ratable value" of the premises or property occupied by them as will raise the required amount. Thus, if £1,000 be required in a given area, and the "ratable value" is £20,000, the rate in the pound will be one shilling, and so on. This ratable value is now copied into the ratebooks from parish valuation lists, prepared by the overseers under the supervision of the union assessment committees of the boards of guardians.[2]

Prior to the passing of the Parochial Assessments Act of 1836, there was no statutory regulation of valuations, and the

[1] Mr. Goschen's Budget Speech, 1887.

[2] See *ante*, p. 83.

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utmost diversity of practice prevailed. In some cases the valuations were of very old standing, and even if they were originally fair and equal, had long ceased to be so. In most cases gross inequalities existed, and no pretense was made of uniformity of practice in the parishes contributing to a common county rate.[1] Long after 1836, the practice of undervaluation continued to be resorted to by the overseers of parishes in backward districts, and it is not yet eradicated. It has, however, been further checked and minimized by the Union Assessment Committee Act of 1863. The form of valuation list now in use provides for the insertion in two columns of the "gross estimated rental" and "ratable value" of each holding; the former being based on the yearly rent which a tenant would pay who was required to pay also the tithe and the usual tenant's taxes. In those cases where the tenant undertakes to effect the repairs usually falling upon the landlord or any other of the usual landlord's charges, a corresponding addition is required to be made to the amount of his rent in assessing the "gross estimated rental." Where, on the other hand, the landlord contracts to pay the tithe or the usual tenant's taxes, a corresponding deduction is made for assessment purposes. Having thus found the gross estimated rental, the ratable value is arrived at by deducting therefrom such a proportion as will cover the average outgoings for repairs and insurance.

Although the acts of 1836 and 1863 gradually effected a great improvement, the machinery for carrying this scheme into operation still remains inadequate and inefficient, except in the metropolis. In the remainder of England and Wales no statutory provision exists for the obligatory periodic revaluation of the rated properties, and no effectual mode of ascertaining the rents and conditions of tenancy of the individual holdings has been applied to local tax assessments. A further element of confusion is furnished by the absence of uniformity in the scales of deduction for repairs and insurance adopted in the provincial unions. No scale is prescribed by statute (except for the metropolis) and considerable diversity prevails in

[1] Lord Monteagle's Draft Report on Burdens on Land, pp. 17 and 24.

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practice. In the metropolis the like unsatisfactory condition of affairs was ended by an act of 1869, under which the national and local valuation proceedings are unified, and a single valuation list governs all assessments in the parish for rates and taxes on real property. A single scale of deductions is also prescribed by the act for all the metropolitan parishes.

The progressive increase of the ratable value in England and Wales is shown in Tables II and XI, the latter of which gives a comparison of these figures with those of the valuations for the national real property tax in certain years.

The proportions of the total annual value of real property borne by the several principal classes thereof, in certain years, are as follows :[1]

	1814	1843	1868	1890–91
Lands and tithes . .	69.28	49.10	33.20	19.24
Houses	27.84	41.44	47.27	56.35
Railways	——	2.82	11.11	14.02
Other property . .	2.88	6.64	8.42	10.39

The amounts and proportions of the local rates borne by lands, houses and other properties, in 1817, 1868 and 1891, are as follows ;[2] the differences in the percentages, when compared with those given above, being due to the relatively greater weight of the local taxation in urban areas than in rural districts :

YEAR.	RATES BORNE BY LANDS AND TITHES.		RATES BORNE BY HOUSES AND OTHER PROPERTIES.	
	AMOUNT.	PERCENTAGE.	AMOUNT.	PERCENTAGE.
	£		£	
1817 . . .	6,730,000	66.66	3,370,000	33.33
1868 . . .	5,500,000	33.33	11,000,000	66.66
1891 . . .	4,260,000	15.31	23,560,000	84.69

[1] From Mr. Fowler's Report on Local Taxation, 1893.
[2] *Ibid.*

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Mr. Fowler, in his recent report, shows that whilst the rate in the pound of all rates in London had risen from 4*s.* 4½*d.* in 1868 to 5*s.* in 1890–91, and correspondingly in other urban districts, the figures of the total rates in rural districts in the same years fell from 2*s.* 7½*d.* to 2*s.* 3*d.*[1] He concludes an exhaustive analysis of the figures of the rural rates with the following observation :

> Taking the table as a whole, it greatly strengthens the presumption which arises from the figures previously given, that at no period in the present century, for which statistics are available for the purposes of comparison, has the rate in the pound of the rural rates been as low as it was in 1890 and 1891 in the great majority of the counties of England and Wales ; and that the counties in which the fall in the rate in the pound has been the greatest have, generally speaking, been the agricultural counties.[2]

It thus appears that whilst the rates as a whole have risen in recent years in London and the other urban districts, in spite of the enlarged aid received from national taxation, there has been, as the result of that aid, a not unsubstantial fall in those levied in rural districts.

It has already been stated that the local rates are assessed upon the basis of the valuation lists prepared by the parochial overseers. This is generally true alike of the rates made and collected by the overseers themselves (comprehended under the general head of poor rates) and of those made and collected by other local authorities. Owing, however, to the lack of uniformity in the preparation of the provincial valuation lists, the county authorities have been empowered to prepare an independent scheme or basis of contribution for the purpose of the county rates in each county, exclusive of the metropolis. The national property tax assessments are utilized for this purpose, and revised quotas or apportionments for the several parishes in each county are fixed at intervals of about seven years. Having determined the parochial quotas, they leave the overseers to levy the individual contributions as a part of, or

[1] Local Taxation Report, 1893, p. 1.
[2] *Ibid.*, p. 35.

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addition to, the poor rates.[1] The meaning of this is that whilst the parish valuation list is held to be a fair basis for the distribution of parochial burdens and of the common charges of the union, it is not accepted as the basis of contribution by the several parishes to the common county charges. No such distinction is drawn in the case of the general district rate and the borough rate, notwithstanding that most of the boroughs comprise several parishes within the municipal area, and that some are situate in more than one union.

An important modification has been introduced into the practice of rating in connection with the Lighting and Watching Act of 1833, and the series of Sanitary and Improvement Acts which commenced in 1848. Watching and lighting rates under the first-mentioned act are chargeable only on one-third of the full rate in the pound when levied in respect of land and tithes. Sanitary rates in urban districts, and those for special sanitary purposes in rural districts, are chargeable in respect of agricultural land, tithes, railways, docks and canals on one-fourth only of the rate in the pound applicable to other properties.[2] No such concession is made in respect of that part of the municipal taxation of corporate towns which falls under the head of borough rate, although much of the expenditure to which the proceeds are applied is of a similar character. A further modification has been introduced by the creation of the metropolitan common poor fund in 1867. Each of the thirty-two London parishes or districts contributes to this fund in proportion to its ratable value, and receives from the fund in return a grant in aid of certain classes of expenditure, the grant being proportionate to that expenditure. The effect of this arrangement is that the wealthier districts, having a high ratable value and low expenditure, are taxed to assist the poorer districts where the situation is reversed. In the year 1890–91, the total expenditure charged to the fund was £936,479, and twelve districts paid £213,931 more than they received. In other words, the twelve wealthier districts

[1] Report of Select Committee on Local Taxation, 1870, pp. 292 and 297.

[2] Or on one-fourth of the net annual value at the full rate in the pound.

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paid that sum towards the expenses of the remaining twenty. The total amount of the poor rates levied in London in 1890–91 was £4,350,012, of which £2,435,164 was expended in poor relief; and of this latter sum nearly two-fifths were charged to the common poor fund. Having regard to the manner in which the poorer classes are massed together in certain quarters of London, the wealthier classes being chiefly resident at the West End, this appears to be an equitable arrangement. It is idle for the rich and aristocratic parishes of the West End of London to disclaim responsibility for the relief of the poor in the East End, and objections to the arrangement are usually directed to the fact that, whilst London is taxed as a whole for part of the cost, the expenditure is in the hands of the parochial or union guardians and officials. Under certain circumstances this might easily lead to abuse, and would then give rise to a valid objection; but the grants from the common poor fund are so arranged as to minimize the danger of extravagance, and the Local Government Board is empowered to nominate one-fourth of the members of each metropolitan board of guardians as a further guarantee of efficiency and economy.

There can be little doubt that the principle underlying the enactments forming and extending the metropolitan poor fund is destined to have a wider application.

The system in force in England and Wales for assessing and levying local rates is extremely complex and confusing, and proportionally costly, inefficient and vexatious. The defects are the more inexcusable inasmuch as considerable reforms have long since been effected in London and in Scotland and Ireland with good results. It is of the greatest importance that these reforms shall be supplemented and extended, and applied to the whole of the United Kingdom without further delay.

CHAPTER IV. *The Incidence of Rates.*

With few and trifling exceptions in particular localities, all the local rates in England and Wales are payable by the

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occupiers of the rated properties.[1] It is true that under the Poor Rate Assessment and Collection Act of 1869 the owners of houses of small value may be rated for the poor rate, instead of the occupiers, but the adoption of this course is a matter of local option and is admittedly without effect on the ultimate incidence of the tax. The tenants of such houses usually prefer an inclusive weekly rent and cheerfully pay the full additional charge in this form when the opportunity is afforded them.

The ultimate incidence of the rates on farm lands is normally upon the landowner. The general truth of the theory that such taxes operate to reduce agricultural rents is so well established as to render unnecessary any fresh argument of the point here. Professor Seligman's recent work on the incidence of taxation is especially full and complete, and his exposition of the laws applicable to this branch of the subject may be accepted as confirming the best scientific English doctrine.[2] There is, however, a question of fact as to which a word of qualification is necessary. He states (page 100):

> In that large part of England where there are no leases, and where farmers are generally charged with a lower rent than the purely competitive or rack rent, the greater portion of the recent increase in local rates has fallen on the tenant, not the landlord. . . . As a matter of fact the greater portion of the English farmers are not rack-rented.

With regard to this passage it has to be remembered that the recent increase in local rates has been almost wholly in urban areas and has only affected the farmers to a comparatively small extent, if at all. This is exhibited more fully elsewhere in this paper,[3] and is only referred to here in

[1] Mr. R. Dudley Baxter drew the attention of Mr. Goschen's committee of 1870 to the historical fact that down to the fifteenth century the occupiers were almost always the actual or virtual owners also, and that the present system of tenancies is of gradual and later growth. Q. 6037 *et seq.* Prof. Thorold Rogers also laid stress on this point in his speech in the House of Commons, March 23, 1886, on local taxation. See Cassell's reprint, p. 6.

[2] The Shifting and Incidence of Taxation, chap. ii.

[3] See *ante*, p. 98.

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passing. The question of fact as to which Professor Seligman appears to have been misinformed is that of the character of the bulk of English farm rents. For some years past these have been not merely rack-rents, but something more. The great fall in the prices of agricultural produce has swallowed up the margin between the actual rents and the purely competitive rents (which undoubtedly did formerly exist on many of the larger estates) and has created a margin on the reverse side which has been rapidly eating up the farmers' capital. The action of economic processes has slowly readjusted rents to the level of prices in many cases, — especially in grain-growing districts, where the fall began first to take effect, — but the operation is not yet complete. Landlords and tenants have alike clung to the hope that the fall in prices was only a temporary one; but instead of rising, prices have continued to fall and have now reached the lowest general level of modern times. For these reasons, the fall in actual rents has seldom kept pace with the fall in economic rents, and is still, in many cases, partially or wholly suspended.[1] As the process of readjustment gradually becomes complete the ultimate incidence of rural rates will be much more fully than formerly on the landowner; the old semi-feudal relations between landlord and tenant, which tended to the maintenance of easy rents, having given way under the strain of recent economic and political events. Strictly commercial relations will generally prevail in the future.

The rating of tithes has always been somewhat peculiar. The gross annual income of the property is assessed, subject only to a small deduction in respect of rates and ecclesiastical dues; and the owner is deemed to be also the occupier. The owner is thus made liable for the immediate and direct payment of the rates levied in respect of his property, in addition to those which he may have to pay as the occupier of a house. His position differs from that of the landowner,

[1] These are notorious and accepted facts, but they may be found well stated at greater length in the articles on "The Agricultural Problem," by Mr. W. E. Bear, in the *Economic Journal*, September and December, 1893.

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inasmuch as the latter only becomes the bearer of the burden of the rates levied in respect of the holdings of his tenants by the operation of an unseen economic process, which is liable to disturbance and arrest.

Before proceeding to discuss the incidence of urban local taxation it is necessary to state that the curious and probably unintentional exemption of the occupiers of all mines except coal mines, and of all woods except salable underwoods, from liability for poor rates was at length ended by the rating act of 1874.[1] Under this law these subjects, together with fishings and shootings, were brought into the categories of ratable property; and little, if anything, now remains excluded to which the liability for rates could legitimately be extended. The general rule of assessment upon the "annual value" is, in spite of difficulties, applied all round with a uniformity rare in English legislation.

Few questions have been more stubbornly debated in England in recent years than that of the incidence of rates levied in respect of the occupation of houses. The subject has been considered by Mr. Ayrton's committee in 1867, by Mr. Goschen's committee in 1870, by the Irish Local Government and Taxation Committee, 1876–78, and by the Town-Holdings Committee in 1886 and the five following years. The evidence given was in each instance strongly contradictory, and the reports presented were hesitating and inconclusive. But these committees agreed in recommending a division of rates between owners and occupiers, — a proposition which was also endorsed by the House of Commons in 1886.[2] The experience gained in this controversy serves to show that parliamentary committees are the worst possible instruments for elucidating obscure economic principles and theories.

[1] See *ante*, p. 81.

[2] The equal division of rates has been approved by Palgrave (Local Taxation, 1871, p. 67); Phillips (Cobden Club Essays, 1882, p. 499); Goschen (Draft Report, 1870, p. 22); Rogers (Speech, March 23, 1886); Seligman (Shifting and Incidence of Taxation, p. 128); and Bastable (*Economic Journal*, vol. iii, p. 259). It has been opposed by Sargant (Urban Rating, 1890); Cox (Land Nationalization, p. 97); Beken (Taxation of Ground Rents, 1893); and Powell-Williams (*Nineteenth Century*, February, 1893).

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The true theory of the incidence of urban rates is based upon the recognition of the primary facts, (1) that houses are necessaries of life, and (2) that the rent they will command is governed by the state of the market, as in the case of other commodities. These points are well put by Mr. McNeel-Caird, who says:

> Dwelling-houses, on the other hand [*i.e.*, as distinguished from farm lands], are not instruments of production, but necessaries of life. Demand and supply, in each locality, determine their rent; but the question of its amount is not embarrassed by any consideration, on the tenant's part, of produce to be raised or profit to be made by their use.[1]

It follows from this that the rent and rates fall upon the occupier's income precisely as in the cases of food, clothing, fuel and artificial light; and that the effect, alike of the original quota of rates and of any subsequent increase, upon house-rents is no greater than that produced by the fluctuations in the prices of other necessaries of life.[2] Most of the English writers who have opposed the alteration of the existing system have assumed, without evidence, that the amount which each occupier of a house can pay for rent and rates together is rigidly inelastic; and that any increase of rates, or indeed any rates at all, must necessarily be met by a reduction of rent. This error has utterly vitiated the whole mass of argument advanced by them. There is no such relation between the two things. A general and uniform increase of rates throughout a town would be met (other things remaining as before) in one or more of three ways: the occupiers would lessen either their savings, their expenditure on luxuries or their expenditure on necessaries. Houses fall under the latter head, and would possibly be chosen by some as the item in which to effect retrenchment. But the surrender of some part of his customary house accommodation is, for many

[1] Local Government and Taxation (Cobden Club Essays, 1875), p. 155.

[2] Professor Bastable (*Economic Journal*, No. 10, p. 261) demurs to this statement, but the reason he gives is not convincing. Fact and experience support the view embodied in the text. See next note.

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reasons, repugnant to the feelings of the average householder, and would only be resorted to under the strongest pressure, and in a small proportion of cases.[1] The effect on rents would therefore, in the absence of other contributory causes, be inappreciable. The distribution of the burden of the original quota of rates is precisely similar, being, indeed, governed by the same laws. In all those towns where the normal growth of population and degree of prosperity are maintained or exceeded, and the demand for dwelling-houses continues to make the erection of new ones necessary and profitable, the occupiers have no power to shift the burden of the rates, or any part of it, to either house-owner or ground-landlord. Only in the comparatively rare cases of decaying towns and failing demand is the occupier able to shift the burden to the owner; and his advantage will, even here, be only temporary, unless the decay of the town and decline in the demand keep pace with the decay of the existing houses.[2]

In a former contribution to the discussion of this subject[3] I expressed the opinion that shops, or at least some shops, formed an exception to the rules of incidence applicable to dwelling-houses; and argued that the laws which governed the case of farm-lands had a partial, if not entire, applicability to shops and other purely business premises. This line of argument was fortified by another, founded upon the monopoly which the owners of the finest city sites possess; and the two were not kept as distinct as was needful. Professor Seligman has expressed his dissent from the conclusion arrived at, and explains his objection to the monopoly argument.[4] He partly

[1] A diminution of savings or of the use of luxuries not only involves a smaller sacrifice, but avoids the proclamation of poverty to the world. The latter is also true of retrenchment in food, fuel and other privately consumed necessaries of life.

[2] The only other writer with whose work I am acquainted who has exhaustively investigated this subject and reached a sound conclusion is Professor Seligman, whose Shifting and Incidence of Taxation was in progress when my former essay (see next note) appeared.

[3] "The Incidence of Urban Rates," *Economic Review*, October, 1891.

[4] Shifting and Incidence of Taxation, p. 121, note. Professor Bastable (*Economic Journal*, vol. iii, p. 263) accepts the monopoly theory advanced by me in the *Economic Review*.

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admits the analogy between shops and farms, but expresses the opinion that the shopkeeper will try to meet an increase of rates by charging higher prices for his goods. Fuller consideration, while inducing me to attach less weight to the relative eligibility of different sites, has strengthened my conviction that the case of shops differs largely from that of private dwelling-houses. The ability of the shopkeeper to add the increase of his rates to the prices of his goods must depend upon his freedom from the competition of traders not equally subject to the increased expense, such as, for instance, shopkeepers and merchants in other towns or abroad, and hawkers. The barriers which protect the shopkeeper from the invasion of his market from a distance are more and more giving way, owing to the increasing facilities for communication of every kind; and he will soon be little better off in this respect than the farmer. When the shopkeeper cannot shift the expense to his customers, it would appear that it must fall ultimately upon the ground-owner. The proportion borne in either manner is not precisely ascertainable, but the greater part would seem to go into the latter scale. It must, of course, be understood that if the result of an increase of rates should be to reduce shop rents, the loss would fall upon the owner of the building during the currency of his lease. It is only in those cases where the latter is also the owner of the ground-plot that the burden would fall upon the ground-landlord immediately. The case of dwelling-houses in decaying towns would be subject to the like reservation.

From the foregoing survey of the incidence of local taxation in England and Wales we reach the following conclusions:

(1) The rates levied in respect of the occupation of farmlands, tithes, woodlands, mines and quarries, are, in normal circumstances and in their final result, a charge on the ownership of the property; but owing to the system of collecting the rates from the occupiers, the economic process by which the tax ordinarily reaches its destination is liable to be arrested or disturbed, and the tax will then remain wholly or partly a burden on the occupiers.

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(2) In the case of dwelling-houses the rates remain where they are first placed, and are in reality an income tax on the occupiers.

(3) Shops and other business premises apparently occupy an intermediate position, but with a tendency to approximate to the position of farm-lands, mines and quarries. The rates must fall upon the freeholder in the long run, unless the shop-keeper or other occupier can add to the prices of his goods a sum sufficient to clear the expense. His ability to do this will partly depend upon the amount of the rates in neighboring towns and elsewhere, and partly upon his possessing a local market not liable to invasion from a distance.

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ENGLAND.

[*Concluded in the following number.*]

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APPENDIX.

PART I. — ENGLAND AND WALES.

TABLE I.

ANALYSIS OF EXPENDITURE OUT OF POOR RATES AND RECEIPTS IN AID THEREOF, 1890–91.

(From Local Taxation Returns, 1890–91.)

RELIEF OF THE POOR—		
In-maintenance	£1,951,486	
Out-relief	2,400,089	
Maintenance of pauper lunatics	1,284,656	
Loans repaid, and interest thereon	620,761	
Salaries, pensions and rations of officers	1,452,810	
Other expenses	933,516	
Total, as per column 2, Table II,		£8,643,318
Payments for county, borough or police rates, as per column 3, Table II,		6,171,171
Payments for highway purposes, being part of sum shown in column 5, Table II,		720,246
OTHER PAYMENTS—		
To burial boards	£121,191	
" rural sanitary authorities for sanitary purposes	165,026	
" school boards and school attendance committees	896,964	
" commissioners of baths and wash-houses	31,034	
" free library commissioners	30,759	
" conservators of commons	177	
Cost of legal proceedings	44,035	
Valuation and assessment expenses	101,768	
Salaries and pensions of parochial officers, and other expenses	614,753	
Registration (births, deaths, *etc.*)	94,693	
Registration (voters) and jury lists	200,506	
Vaccination	84,295	
School fees of non-pauper children	33,089	
Other expenses	32,250	
Total, as per column 4, Table II,		2,450,540
Total expenditure		£17,985,275

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TABLE II.

GENERAL VIEW OF CERTAIN BRANCHES OF LOCAL TAXATION FROM 1747 TO 1890.

(Compiled chiefly from the reports of the Poor Law Board and Local Government Board.)

YEAR ENDED MARCH 25.	NET COST OF POOR RELIEF. £	PAID TO BOROUGH, COUNTY AND POLICE RATES OUT OF POOR RATES. £	OTHER PAYMENTS OUT OF POOR RATES, EXCEPT TO HIGHWAY RATES. £	HIGHWAY RATES LEVIED. £	CHURCH RATES LEVIED. £	POPULATION.	RATABLE VALUE. £
(3 years' average.)							
1747–50	689,971	Not ascertained.	Not ascertained.	Not recorded prior to 1811.	Not recorded prior to 1826–27.	No census prior to 1801.	Not recorded prior to 1840–41.
1775–76	1,530,800						
(3 years' average.)							
1782–85	2,004,239						
							(Property tax valuation, 1803.)
1802–03	4,077,891			(3 years' average, 1811–13.)		9,234,649	34,864,145
							(Property tax valuation, 1813.)
1812–13	6,656,106			*1,407,200		10,649,743	53,495,375
1817–18	7,870,801		644,000	1,415,000		11,555,054	
1826–27	6,441,088	762,187	600,191	1,121,000	†564,388	13,247,277	
1836–37	4,044,741	604,203	763,994	No record.	No record.	14,955,000	
							(Ratable value, 1840–41.)
1839–40	4,576,965	855,552	634,909	1,169,891	506,812	15,562,000	62,540,030
1850–51	4,962,704	1,392,509	564,194	1,663,000 (1849)	400,000	17,773,324	67,700,153 (1849–50)
1860–61	5,778,943	1,925,210	691,059	1,416,000 (1862)	234,000	19,902,713	71,840,271 (1855–56)
1870–71	7,886,724	2,708,840	848,331	1,379,340	23,186	22,501,316	107,398,242
1880–81	8,102,136	3,588,308	1,807,595	1,674,848	11,996	25,714,288	135,645,473
1890–91	‡8,643,318	‡6,171,171	‡2,450,540	‡1,322,091	5,723	29,001,018	152,116,008

* Inclusive of estimated value of statute labor, £535,000. (See note 1, page 85.)

† Including rents of estates. See Lord Monteagle's Draft Report on Burdens on Land, 1846, p. 26, in which the gross amounts for 1831 and 1838–39 are given as £446,247 and £263,103, respectively. The figures in this column for 1839, 1850 and 1860 are taken from Mr. Goschen's Report on Local Taxation, 1870, p. 71.

‡ See Table I. The highway rates in the above table are, in the later years, exclusive of urban areas, for which no separate highway rates are levied. For total highway and street expenditure see Table VII.

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TABLE III.

Being a copy of that given by the Poor Law Commissioners in their report of 1843 on local taxation, and showing the nature and amounts of the local taxes at that date, so far as they could be ascertained, exclusive of poor rates, county rates, highway rates and church rates, for which see Table II.

The revenue of the municipal corporations, remodeled under the 5 and 6 Wm. IV., c. 76, consisting of	
Rates and other receipts in 1840–41, was	*£989,740
City of London revenue for 1841	188,521
Turnpike trusts, expenditure in 1840	1,659,154
Light dues in England and Wales in 1832	162,717
Fees in the local administration of justice:	
To clerks of justices, average of 1830 to 1834	57,668
To other officers in other local courts	unknown
Total	£3,057,800

TABLE IV.

Being a copy of House of Commons Return, No. 430, year 1870, showing the direct local taxation levied in England and Wales in the year ended March 25, 1868.

1. Amount levied for poor relief		£7,825,592
2. County, hundred, borough and police rates:		
(*a*) Contributed from poor rate	£2,462,922	
(*b*) Levied separately	493,285	
		2,956,207
3. Highway rate:		
(*a*) Contributed from poor rate	621,436	
(*b*) Levied separately	916,779	
		1,538,215
4. Church rates		217,482
5. Lighting and watching rate (exc. Metropolis)		79,393
6. Improvement commissioners (exc. Metropolis)		410,105
7. General district rates (exc. Metropolis)		1,683,702
8. General and lighting rates in the Metropolis		981,140
9. Rates under courts or commissioners of sewers (including drainage and embankment rates)		714,734
10. Rates of other kinds:		
(*a*) Contributed from poor rate	152,076	
(*b*) Levied separately	224,574	
		376,650
Total		£16,783,220

* So far as this consists of rates it is embraced in column 3, Table II.

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TABLE V.

RECEIPTS (EXCLUSIVE OF LOANS) IN ENGLAND AND WALES.

(From Local Taxation Returns, 1890–91.)

	1886–87.	1887–88.	1888–89.	1889–90.	1890–91.
Public rates	£26,637,017	£27,194,836	£27,420,223	£27,713,409	£27,818,642
Treasury subventions and payments	3,975,896	4,268,222	4,790,860	* 2,194,838	* 1,696,340
From Local Government Board out of the local taxation account	—	—	—	† 4,327,441	† 5,484,670
Tolls, dues and duties ‡	3,554,860	3,545,142	3,718,381	3,642,423	3,473,876
Receipts from real and funded property (excluding sales)	1,246,001	1,281,433	1,400,148	1,379,823	1,438,113
Sales of property	548,181	390,394	578,746	513,001	303,104
Fees, fines, penalties and licenses §	1,076,103	1,105,439	1,170,984	1,173,348	1,250,464
Revenue from water works	2,171,558	2,267,932	2,400,407	2,515,217	2,608,928
Revenue from gas works	3,355,383	3,495,436	3,677,929	3,867,416	4,227,021
Revenue from markets, cemeteries and burial grounds, sewage farms and works, baths, washhouses and open bathing-places, libraries and museums, fire brigades, lunatic asylums, hospitals, tramways, slaughter-houses, and harbors, piers or docks ‖	808,118	851,846	858,838	950,500	1,001,384
Repayments in respect of private improvement works	775,106	792,101	737,414	773,438	789,694
Other receipts	1,183,769	1,165,384	1,221,775	1,187,008	1,345,189
Totals	£45,330,992	£46,358,165	£47,975,705	£50,237,862	£51,437,425

* Including grants in aid of the cost of elementary and industrial schools, and the London fire brigade; and other payments out of imperial funds for police, the conveyance and maintenance of prisoners, *etc.*; also including in the year 1889–90 balances of grants discontinued under the provisions of the Local Government Act, 1888, and of the temporary grants provided for by that act.

† Including £3,742,615 in 1889–90, and £4,743,989 in 1890–91 received by the councils of counties and county boroughs, and £584,826 in 1889–90, and £740,681 in 1890–91 received by the receiver for the Metropolitan police district. The amount paid to the councils includes the amounts distributed, or to be distributed, by them to other local authorities under the provisions of the Local Government Act, 1888, in substitution for the discontinued Parliamentary grants, and otherwise.

‡ Including market rents and stallages, and harbor tolls, dues and duties.

§ Including £589,404 in 1886–87, £616,933 in 1887–88, £648,502 in 1888–89, £659,669 in 1889–90, and £684,427 in 1890–91 from school fees, and sale of books, *etc.*, to children.

‖ Excluding receipts entered under the heads of rates, tolls, dues, *etc.*

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TABLE VI.

RECEIPTS AND EXPENDITURE, 1868 AND 1890–91, IN ENGLAND AND WALES.

(Condensed from Mr. Fowler's Report on Local Taxation, 1893.)

LOCAL AUTHORITIES.	1868.		1890–91.			
	Receipts including Loans.	Expenditure including that out of Loans.	Receipts other than from Loans.	Receipts including Loans.	Expenditure not Defrayed out of Loans.	Expenditure including that out of Loans.
Poor law authorities	£9,069,754	£8,977,504	£7,975,102	£8,340,233	£9,893,941	£10,233,044
Burial boards	208,586	209,365	449,256	538,519	428,840	513,844
London county council, Metropolitan vestries and district boards, commissioners of police of the Metropolis, corporation of London, and commissioners of sewers of the City of London	6,179,594	6,008,648	7,592,797	7,961,676	6,309,108	7,292,322
Visiting committees of pauper lunatic asylums	—	—	86,996	86,996	288,857	288,857
Churchwardens (church rate)	301,740	305,525	5,724	5,724	5,606	5,606
School boards	—	—	5,140,144	5,980,728	5,195,553	6,003,672
Municipal corporations, borough and other urban and port sanitary authorities and joint boards (exc. Metropolis)	6,779,500	7,016,983	19,697,897	23,503,597	19,358,279	23,656,212
Highway authorities	1,484,169	1,476,183	1,353,276	1,355,476	1,326,196	1,329,801
Harbor, pier and dock authorities	1,945,805	2,071,796	2,768,664	3,109,327	2,659,321	3,000,867
County authorities (exc. Metropolis)	2,292,948	2,319,348	5,146,821	5,256,281	3,967,547	4,054,666
Commissioners of sewers and drainage, embankment and conservancy boards	245,357	205,266	547,517	593,657	544,520	554,399
Salmon fishery conservancy boards, and sea fishery committees	—	—	13,264	13,264	13,850	13,850
Turnpike trustees, and county road boards, South Wales	1,023,563	1,059,073	3,052	3,052	4,138	4,138
Rural Sanitary authorities	—	—	491,526	656,095	510,661	680,426
Miscellaneous	280,903	278,512	165,389	254,789	156,261	225,373
Totals	£29,811,919	£29,928,203	£51,437,425	£57,659,414	£50,662,678	£57,857,077

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Table VII.

Classification of Expenditure not Defrayed out of Loans.

(From Local Taxation Returns, 1890-91.)

	1886-87.	1888-89.	1890-91.
Relief of the poor (including salaries, but excluding maintenance of pauper lunatics)	£6,450,302	£6,599,222	£6,737,901
Pauper lunatics and lunatic asylums	1,433,799	1,493,265	1,632,780
Police	3,767,033	3,892,949	4,145,575
Prosecutions, and conveyance and maintenance of prisoners	214,614	215,465	208,006
Education (including expenses of school boards, school attendance committees, reformatories and industrial schools)	3,635,938	3,863,438	4,305,286
Highways, street improvements and turnpike roads	5,502,107	5,681,607	6,162,189
Gas works	2,477,650	2,627,416	3,263,974
Public lighting	893,530	909,200	973,212
Water works	798,781	864,614	969,277
Sewerage and sewage disposal works	999,731	879,848	1,067,364
Markets and fairs	264,957	294,027	282,724
Cemeteries and burial grounds	242,328	243,650	268,870
Fire brigades	195,079	206,162	229,997
Public buildings, offices, *etc.* (not included under other headings)	153,201	208,428	213,666
Parks, pleasure grounds, commons and open spaces	167,075	207,760	272,911
Public libraries and museums	140,016	179,658	220,479
Baths, wash houses and open bathing-places	123,384	130,230	155,530
Bridges and ferries	171,653	379,844	199,278
Artisans' and laborers' dwellings improvements	51,415	23,955	18,158
Contagious diseases (animals) acts	98,920	142,517	125,491
Hospitals	98,721	163,924	187,677
Harbors, piers, docks and quays	1,065,765	1,111,413	1,429,249
Slaughter houses	12,576	14,680	14,844
Land drainage, embankment and river conservancy	257,279	235,797	252,818
Tramways	22,761	29,096	38,570
Other public works and purposes	2,237,104	2,332,151	2,607,453
Private improvement works	573,806	536,261	580,960
Payments in respect of principal and interest of loans (including payments to sinking funds) *	10,515,645	11,163,803	11,393,715
Salaries and superannuation allowances †	1,458,385	1,527,575	1,627,849
Establishment charges †	432,876	441,840	484,994
Legal and Parliamentary expenses †	99,987	119,143	195,658
Other expenditure	366,397	363,190	396,223
Totals	£44,922,815	£47,082,128	£50,662,678

* Under this heading are included the payments on account of the principal and interest of the loans raised for all the specific purposes mentioned in the table.

† Only a portion of the salaries of the officers, establishment charges, and legal and Parliamentary expenses of the local authorities is included under these headings. In many cases the expenditure of the local authority for these purposes in connection with some particular undertaking or purpose is included in the expenditure on that undertaking or purpose.

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TABLE VIII.

RECEIPTS FROM PUBLIC RATES IN ENGLAND AND WALES.

(Condensed from Mr. Fowler's Report on Local Taxation, 1893.)

LOCAL AUTHORITIES.	RECEIPTS FROM RATES.			
	1868.	1873-74.	1880-81.	1891.
Poor law authorities	£7,830,966	£7,901,444	£7,969,845	£7,474,099
Burial boards	96,407	134,104	130,229	178,030
London county council, Metropolitan vestries and district boards, commissioners of police of the Metropolis, corporation of London, and commissioners of sewers of the City of London	2,315,210	2,449,342	3,168,184	4,738,310
Churchwardens (church rate)	230,707	15,170	11,996	5,723
School boards	—	251,906	1,562,385	2,967,421
Highway authorities	1,427,940	1,514,758	1,674,848	1,322,091
Municipal corporations, borough and other urban sanitary authorities, and joint boards (exc. Metropolis)	3,008,184	4,617,763	6,281,723	8,597,814
County authorities (exc. Metropolis)	1,295,621	1,573,871	1,587,953	1,677,791
Commissioners of sewers	42,871	48,724	57,817	47,559
Drainage, embankment and conservancy boards	176,138	196,962	202,380	244,894
Rural sanitary authorities	—	174,286	220,651	411,971
Miscellaneous	79,393	27,807	39,779	152,939
Totals	£16,503,437	£18,906,137	£22,907,790	£27,818,642

SUMMARY.

Purely urban	£6,730,000	£8,769,000	£12,225,000	£17,513,000
Partly urban and partly rural	8,357,000	8,420,000	8,748,000	8,196,000
Purely rural	1,415,000	1,716,000	1,933,000	2,108,000

Table IX.

Showing the Amounts Voted in Relief of Local Taxation from National Revenues.

(Compiled from Mr. Fowler's Report on Local Taxation, 1893.)

Parliamentary Grants in Aid of Local Rates.

Grant in Aid of	When First Voted.	1867–68.	1873–74.	1887–88.	1891–92.
Teachers in poor law schools	1846	£34,500	£36,098	£36,825	—
Poor law medical officers	1846	104,500	125,602	149,506	—
Police, counties and boroughs	1856	225,000	297,459	864,083	—
Metropolitan police	1833	164,848	229,990	575,141	—
Criminal prosecutions	1835	150,000	138,466	133,732	£4,300
County and borough prisons, and	1846	* 109,000	95,870	—	—
Removal of convicts	1835				
Metropolitan fire brigade	1865–66	10,000	10,000	10,000	10,000
Berwick bridge	1831	90	90	90	90
Industrial schools (local authorities)	1876	3,574	8,172	32,212	38,800
Elementary education (school boards):					
Fee grant	1891	—	—	—	329,285
Annual grants for day and evening scholars	1870	—	76,734	1,255,938	1,508,427
School boards in poor districts	1870	—	208	7,167	8,395
Medical officers of health and inspectors of nuisances	1873–74	—	14,727	73,910	—
Pauper lunatics	1874	—	—	485,169	—
Registration of births and deaths	1875	—	—	9,500	—
Disturnpiked and main roads	1882	—	—	498,797	—
Totals	—	£801,512	£1,033,416	£4,132,070	£1,899,297

* This amount includes estimated expenditure in respect of Scotland.

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TABLE IX — *Continued.*

Local Charges transferred to, and other Charges of a Local Nature borne by, Annual Votes of Parliament.

CHARGE IN RESPECT OF	When First Voted.	1867-68.	1873-74.	1887-88.	1891-92.
District auditors	1846	£17,900	£18,261	£15,246	£14,069
Clerks of assize	1852	18,500	20,124	19,602	17,975
Compensation to clerks of the peace, *etc.*	1855	* 6,400	* 5,348	* 1,806	198
Central criminal court	1846	—	4,065	5,181	—
Middlesex sessions	1859-60	—	956	819	1,454
Public vaccinators	1867	6,000	8,795	16,468	—
Elementary education (voluntary schools):					
Fee grant	1891	—	—	—	493,155
Annual grants for day and evening scholars	1854	443,345	973,526	1,927,285	2,089,473
Reformatory schools	1854-55	† 99,426	70,160	66,920	62,365
Industrial schools (other than those of local authorities)	1856-57		79,833	103,667	109,026
Rates on government property	1859	‡ 27,000	‡ 33,799	182,459	192,344
County and borough prisons, and removal of convicts §	See above, transferred 1877	—	—	398,683	398,047
Pleuro-pneumonia	1890	—	—	—	140,000
Totals	—	£618,571	£1,214,867	£2,738,136	£3,518,106
Total parliamentary subventions	—	£1,420,183	£2,248,283	£6,870,206	£5,417,403
Probate duty and licenses	—	—	—	—	5,313,278
Customs and excise duties	—	—	—	—	1,115,801
Total relief of local taxation from national revenues	—	£1,420,183	£2,248,283	£6,870,206	£11,846,482

* These amounts include payments to Irish officers. † This includes payments in respect of Scotland. ‡ These amounts include payments in respect of Scotland.
§ The control and cost of the prisons of Great Britain were taken over by the central government in 1877.

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TABLE X.

LOCAL LOANS — ENGLAND AND WALES.

(From Mr. Fowler's Report on Local Taxation, 1893.)

Amounts and Purposes of Outstanding Loans of Local Authorities in 1884–85 and 1890–91.

	1884–85.	1890–91.
Poor law purposes*	£6,361,180	£7,056,166
Lunatic asylums	3,326,396	3,686,662
Police stations, gaols and lock-up houses	720,737	1,122,548
Schools (including reformatories and industrial schools)	14,876,928	18,616,269
Highways, street improvements and turnpike roads	26,945,772	28,275,890
Electric lighting and supply	—	56,942
Water works	30,326,966	38,325,912
Gas works	13,768,690	14,991,197
Sewerage and sewage disposal works	16,569,353	19,969,077
Markets	5,004,400	5,380,982
Cemeteries and burial grounds	2,368,638	2,492,185
Fire brigades	308,508	489,741
Public buildings, offices, *etc.* (not included under other headings)	3,751,055	4,315,707
Parks, pleasure grounds, commons and open spaces	2,441,108	3,992,137
Public libraries, museums and schools of science and art	374,887	489,693
Baths, washhouses and open bathing-places	561,649	950,308
Bridges and ferries	3,112,592	4,053,596
Artisans' and laborers' dwellings improvements	3,532,383	3,814,035
Cattle Diseases Prevention Act, 1866	139,367	76,239
Hospitals	336,184	669,234
Harbors, piers, docks and quays	28,537,809	31,466,462
Land drainage and embankment, river conservancy and sea defenses	2,158,452	3,147,417
Tramways	1,167,605	1,317,555
Private improvement works	890,019	940,969
Loans charged on church rates	18,645	6,100
Allotments	—	14,164
Public lighting	28,576	46,095
Slaughter houses	60,325	121,631
Other purposes	5,519,804	5,330,545
Total	£173,207,968	£201,215,458

*Including the asylums for imbeciles provided by the managers of the Metropolitan asylums district, loans for which are excluded from the amounts entered under the heading of "lunatic asylums."

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TABLE XI.

COMPARISON OF THE VALUATION OF THE PROPERTIES ASSESSED FOR CROWN PURPOSES WITH THAT OF THE SAME PROPERTIES ASSESSED FOR LOCAL PURPOSES.*

(From Report of Local Government Board, 1891–92.)

YEAR.	THE METROPOLIS.		THE REST OF ENGLAND.	
	(1) Gross Value in Income Tax Assessment under Schedule A.	(2) Valuation under Valuation (Metropolis) Act.	(3) Gross Value in Income Tax Assessment under Schedule A.	(4) Valuation by Assessment Committees.
1874–75	£24,192,112	£24,145,246 19,884,462	£107,689,995	£97,812,540 84,049,290
1879–80	28,444,287	28,423,199 23,353,813	123,107,104	111,355,633 95,390,307
1884–85	32,895,336	32,895,317 27,128,614	127,047,097	118,025,110 100,982,696
1889–90	35,122,308	35,122,308 28,940,869	128,210,887	120,499,028 102,004,910
1890–91	35,533,116	35,533,116 29,268,945	129,175,384	122,157,606 103,377,558

*In 1889–90 the gross estimated rental of property in England and Wales rated, but not assessed under Schedule A, was £27,301,566. The ratable value of this property was £21,931,257.

NOTE. — In columns (2) and (4) the first of the bracketed figures against each year represent the "Gross Estimated Rental" and the second the "Ratable Value."

These figures show that the valuation of property in respect of income tax under Schedule A is now the same as the gross estimated rental shown by the poor rate valuation in the Metropolis, but that, as regards the rest of England, the crown valuation is still largely in excess of the poor rate valuation. In 1890–91 the gross value in the income tax assessment for England and Wales, excluding the Metropolis, exceeded the gross estimated rental for the purposes of the poor rate by 5.7 per cent, whilst in the Metropolis the assessment and the rental were precisely the same in amount.

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THE VILLAGE IN INDIA.

THERE is a vague idea widely current that India is in a peculiar sense the home of what is known as "the village community." "A village community" is a loose phrase, capable of a score of applications, — to a chance collection of squatters' shanties as well as to a Shaker communism. Where there is a keen sense of common interests among the dwellers in a village, the term community is not unsuitable, and but for the further suggestions and implications which have come to be involved in its use, it might still be employed in such a case without hesitation. But the ideas commonly connected with the word go a good deal further than that. It calls up a picture of a group of self-governing tillers of the soil, either owning in common the area which they cultivate, or showing, by the remnants of communal enjoyment which still survive, that such had been their earlier practice. Of such a community, India is usually supposed to furnish abundant examples, or at least abundant evident relics; and its fortunate vitality of "custom" — which has passed into a commonplace — thus enables it, we are told, to cast a sorely needed light on the earlier condition of Europe.

For our present purpose, it is hardly necessary to trace in any detail the origin of this idea, though it would form a curious and entertaining chapter in the history of thought. We need only notice that in Sir Henry Maine's *Village Communities in the East and West* (1871) two streams of opinion, previously quite unconnected, came together and united. Of these, one sprang from the European theory of a primitive Teutonic "mark," — a theory which had long been preached by Georg von Maurer, and by this time dominated German historiography; the other rose out of the protracted discussions within Indian administrative circles as to the position of the Indian peasant, and was especially represented by that

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school of officials which had followed Holt Mackenzie in his recognition of the co-sharing villages in the Northwest.[1] And since that time European and Indian conditions have been so closely associated in the writings of sociologists that it has almost ceased to be possible to discuss either apart. For while, on the one hand, the adherents of the mark theory, as their Teutonic evidence dwindles away, fall back on the comparative method, — which frequently resolves itself into an appeal to supposed Indian facts; on the other hand, the younger Indian administrators, brought up in the writings of Maine, can hardly fail to look at Indian phenomena through the spectacles of the mark doctrine.

We need not discuss how far the credit or blame of having popularized the village community idea, as stated above, must be assigned either to Maurer or to Maine, or to a writer whose influence among European sociologists has been far more considerable — Émile de Laveleye. With each of these writers it might possibly be urged that his statements were so guarded or so indistinct as to differ widely from the certitude and definiteness of the current doctrine. It is, however, with this that we have now to do; and it is susceptible of tolerably clear and uncontroversial statement. It holds that the present system of private property in land was preceded by one in which land was owned in common by village groups. This phrase by itself would carry us but a short way; for by "village group" might be understood, and has been understood, almost any sort of small rural aggregation of people. The sort of village, however, that writers have as a matter of fact had in their minds has been the English or German or French village of to-day, *minus* its squire or seigneurial family; or, still more commonly, the New England township as it now is, or is imagined. Analyzing the idea still further, then, we find that the village group is explicitly or implicitly assumed to have the following characteristics, which are indeed closely connected with one another, but may be conveniently distinguished:

[1] Baden-Powell, I, 301; II, 20; *cf.* I, 170.

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(1) The joint owners of the village territory, with their families, themselves perform at any rate the greater part of the work of tilling it. This, using a term commonly employed in this connection, may be called *the peasant character* of the communal owners.

(2) The tillers of the soil are personally free: there may be slaves among them, but they are few and form an inconsiderable portion of the group. This may be called the element of *personal freedom*.

(3) The group of cultivators is independent, so far as the land is concerned, of outside control. They carry on their agricultural operations as they think fit or as they are accustomed; and there is no outside power with a recognized right of removing them, or of taking from them so large a part of their produce that their position is one of subservient dependence. We may call this the element of *village autonomy*.

Bearing in mind these three characteristics, let us now turn to India, and ask how far its village life does actually exhibit such traits now; or, if they cannot be found to-day, whether it would suggest a belief in their earlier existence. The occasion and opportunity for this inquiry are furnished by the recent appearance of three portly tomes by Mr. B. H. Baden-Powell, late of the Bengal civil service, and one of the judges of the chief court of the Punjáb, on *The Land Systems of British India*.[1] This treatise (completing and elaborating one written at the order of the government of India in 1882) is intended primarily for the study of Indian officials, and abounds in the elaborate *minutiæ* of official duty. But the author's method is throughout historical; he is everywhere anxious to present a picture of existing and past conditions so far as they can be ascertained; and he is fully aware of the bearing of his statements on the wider sociological questions at issue. His work must be reckoned among the few treatises — to be counted with ease on the fingers — which are of first importance for the history of land tenure. In what follows, I shall

[1] Oxford, at Clarendon Press, 1892. — xviii, 699, 771, 632 pp.

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do little more than follow Mr. Baden-Powell's conclusions, with the one exception of the Punjáb, where the bewildering complexity of his material seems to have deterred him from generalization, and the reader is left very much to himself.

Putting aside the Punjáb for the moment, and observing first that the village, — defined as "a group of land-holdings aggregated in one place, with generally one or more than one group of dwellings situated somewhere in the area," [1] — is everywhere the unit of social life and of administration, we have to notice that these villages fall roughly into two great classes, the variants being easily recognized as intermediate stages.

> In the one type the aggregates of cultivators have no claim as a joint body to the whole estate, dividing it among themselves on their own principles; nor will they acknowledge themselves in any degree jointly liable for burdens imposed by the state. Each man owns his own holding, which he has inherited or bought or cleared from the original jungle. The waste surrounding the village is used for grazing and wood-cutting, but no one in the village claims it as his . . .; still less do the whole group claim it jointly. [Vol. I, p. 107.]

This is the condition of things in the presidencies of Madras and Bombay; and accordingly the government in those provinces deals directly with the individual *raiyat*, or peasant, for his share of the land revenue, under what is known as "a *raiyatwárí* settlement." In Bengal [2] and the Central Provinces [3] the *raiyats* were demonstrably in the same position when British rule began; although there the revenue settlement, by dealing exclusively with the zemindars, or revenue farmers, has since created a landlord class over the peasants.

Over all these great tracts — more than one half of British India — absolutely the only "communal" feature to be found in the villages is the presence of certain common officers, such as a headman and accountant, and of certain artisans who give their services to the whole cluster of *raiyat* households in return for a share of land or produce.[4] But there is scarcely any of

[1] I, 21. [2] I, 283. [3] I, 138. [4] I, 150 *seq.*

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these for which we cannot find a parallel in the English manor of the middle ages; and so far as officials are concerned, the Indian village cannot compare with what some writers grandiloquently style the "functionalism" of the early New England township. So far as these communal facts are concerned, they cast no fresh light upon the problem: they are facts of the same kind as those already found in Europe, and they do not add any additional strength to the *a priori* argument that may of course be based upon the European facts — the argument that these features look archaic, and therefore must be survivals from an earlier communism.

But while this pleasing speculation is just as legitimate for India as for England, such historical or other evidence as there is tells strongly against it. Among the pre-Aryan races, to judge from what we know of Kolarian and Dravidian peoples still to be found in India, there were probably "village settlements united in tribal areas" under chieftains; and the residents in these places[1] were probably bound together by a real or imaginary tie of blood: but there is "nothing to indicate that the village land-holder claimed any other right than to hold his own clearing."[2] And when the Aryans came,— even if we do not hold, as some writers do, that up to that time they had been a pastoral people, and on settling down to agriculture "copied the Dravidian system," — there is no reason to suppose that they had different ideas. It is almost inconceivable that if there had ever been a period of village joint-ownership, it should have left no traces of itself in popular thought or in the early legal text-books. On the contrary, the *Institutes of Manu* (about 400 B.C.) everywhere speak of property in land in what we should now call the most "individualistic" manner, and dwell expressly on *the right of the first clearer.* We read: "The sages declare a field to belong to him who first cleared away the timber [or, as an early gloss has it, "who cleared and tilled it"], and a deer to him who first wounded it."[3]

[1] Sir William Hunter, in his Orissa, describes these groups of houses among non-Aryan tribes at present as so small as scarcely to deserve the name of hamlet.

[2] Baden-Powell, I, 117. [3] I, 227.

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It is quite certain that no phrase in Manu gives the slightest hint of any joint-body owning in common a certain group of territory in a ring-fence. M. de Laveleye . . . would seem to imply the contrary. I have carefully reëxamined Bühler's translation and find nothing approaching an indication of anything beyond a group of cultivators (under a common headman) whose *individual* right depends on the *first clearing* of the jungle. [Vol. I, p. 128, note.]

And such is even now the popular feeling :

This right is still constantly asserted. In the Punjáb, tenants who never heard of Manu or any other Hindu law-book, and who admit that they have no direct landlord claim, will urge a right to occupy on the ground of having broken up the land and cleared away the jungle. [Vol. I, p. 227.]

These are considerations which ought to be weighed as well as those suggested by the presence of common village artisans. The weight assigned to them will doubtless vary with personal bias ; but when we cast into the scale the absence of common ownership in the modern non-Aryan village, it hardly seems unfair to conclude that so far the balance is against the maintainers of a primitive village communism in India.

The second class of villages is characteristic of the North-west Provinces. Here there is usually a body of proprietors closely united together. In some cases the land is even yet cultivated for the joint benefit of the whole group, and the proceeds annually divided in certain proportions among the members. Where the owners have agreed to divide the cultivated land, they are still regarded as jointly liable to government for the land revenue, under what is called the *Mahal* or village settlement, and are recognized as joint owners of the adjoining waste included in the village area for use as pasturage or for the extension of cultivation.[1] Here, then, at last, we have the *joint* or *shared* village which has played so large a part in Indian controversy ; and at first sight it does indeed look remarkably like the "village community" of European theory.

[1] II, 108.

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But it is one of the many merits of Mr. Baden-Powell's book that it presses upon the attention of "the home-reader and non-official student" a circumstance which must always have been perfectly well known to officials in the country, and which is absolutely fatal to the view we are considering. It is that the village co-sharers are not themselves the cultivators of the land: "they are mostly of non-agricultural castes, and the bulk of their land is held by tenants."[1] Whatever sort of community we may like to call it, it is not a *peasant* community. Moreover, Mr. Baden-Powell lays down as almost indisputable that the body of co-proprietors is the result of nothing more nor less than the multiplication of the descendants of a single person, who somehow or other managed, in many instances in very recent times,[2] to obtain rights of domination or lordship over the village. He does not attempt formally to draw out the argument for this conclusion: but one would gather from the hints he lets fall that it was suggested by the spectacle of the same process going on even at present before the eyes of the English officials; while another fact pointing the same way is, that the shares in very many cases are *ancestral, i.e.*, are "mainly those of the ancestral tree, and follow the law of inheritance."[3] One of the most interesting parts of Mr. Baden-Powell's book consists of an elaborate analysis of the half-dozen ways in which landlord rights have probably grown up.[4] We must content ourselves with quoting his final judgment:

In the Northwestern Provinces and Oudh . . . *the earliest villages* of which we have any evidence consisted of groups of cultivators acknowledging, indeed, a certain bond resulting from propinquity, the employment of a common body of village artisans, and the submission to a common headman, but otherwise claiming no joint interest: *each family owned the field which it cultivated*, or perhaps had cleared from the primeval jungle. Conquering kings and chiefs with their armies then established their government; and then it was that in various ways — by grant, or by the usurpation of higher caste families, and ultimately by the disruption and partition of rulers' estates — indi-

[1] I, 107, 308, note, *et passim*. [2] II, 99. [3] I, 159. [4] I, 130–138.

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viduals or families gained a landlord position in and over villages. . . . In time, the descendants of these became a numerous body, claiming the whole village as their own — forming, in short, the *zamindári*, *pattídári* and other classes of village *landlord* communities known to our text-books. In most cases, therefore, the joint or landlord villages were . . . *a growth over* villages that were already in existence and in the *raiyatwári* form. In the Northwestern Provinces, indeed, *in a very large number* of what are now regular "communities," the body can be traced to an origin no more ancient than that of the auction-purchaser or revenue-farmer, who gained a footing in the days of our first attempts at revenue management about the beginning of the century. [Vol. II, p. 610.]

Summing up, then, we may say that for almost the whole of India, with the exception of the Punjáb, such evidence as we possess runs directly counter to "the idea that in some way a joint-village is necessarily the earliest or original type, and that it is a process of decay whereby joint rights are forgotten and the other type arises."[1] As far as we can see, "the real process of change or development was almost exactly the reverse."[2]

It would be quite as correct (for a general paragraph) to say that the first stage is where a number of colonists settle together, *each working at his own holding and claiming it in severalty*, the only bond of union being that of locality and a common government; that in the next stage a *landlord* arrives — not merely a distant ruler, but a claimant to the actual village acres, — and that he is succeeded by a body of descendants who jointly enjoy the estate for a time; that they then divide almost always on ancestral shares; and that lastly the strict shares are lost or modified by circumstances. [Vol. I, p. 176.]

At last, however, we come to the Punjáb, and there it has to be recognized in the clearest possible way, that a very considerable area *is* occupied by co-sharing or joint-village groups, which cannot, so far as we can see, be supposed to have been superimposed upon any previously existing bodies.[3] In these, the owners "are mostly of the agricultural castes, and consequently the land is largely cultivated by the co-sharers them-

[1] I, 115. [2] I, 175. [3] I, 140; II, 611.

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selves."[1] But it would be a mistake to suppose that this is true of the whole of the area marked Punjáb on our maps. In the southern river-tracts — more than a third of the country — there is nothing that can be fairly called a village; and the same remark applies to certain smaller Himalayan districts.[2] The communities, again, over a large part of the southeast corner, are the descendants of colonies which have reclaimed the prairie during the present century;[3] and the rights of the present villagers depend upon the share taken by their ancestors in the original settlement;[4] very much as in the "proprietary corporations" of New England in the seventeenth and eighteenth centuries. The archaic village of which we are in search must then be found, if found at all, in the central Punjáb and on its northwest frontier, *i.e.*, in rather less than one-half of the Punjáb. But there, it must be confessed, we do seem to meet with it.

Yet we must look a little closer to get an exact impression; and for this purpose it will be well to take the two regions separately. And first as to the northwest frontier.

This territory, before scarcely inhabited, was apparently first occupied by immigrant non-Aryan tribes at a period not before the twelfth and as late as the sixteenth century.[5] These tribes were comparatively small, and each took possession of a particular area. The constitution of society, and therefore the ownership of land, remained tribal down to the time of the British conquest. Each tribesman was no doubt allotted a portion of land for his temporary occupation and use, — an allotment probably varying with his military rank, or what was much the same thing, his degree of kinship to the head of the tribe.[6] Moreover, the tribesmen settled down in what may be called village-groups, which were probably identical with septs or other subdivisions of the tribe.[7] But neither the individual families nor the septs kept permanent possession of any holding. Let us listen to a passage from a report which

[1] II, 310. [2] II, 616, 657. [3] II, 689, 678. [4] II, 690, 691. [5] I, 139.

[6] This seems a fair conclusion from the account in II, 639, of present methods of periodical allotment. The "mouth-partition" is probably later.

[7] II, 636.

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was written in 1872 by Mr. Barkley, and which "has become almost classical." Mr. Barkley, it is evident from the context, is a believer in the village community, and the description which we are about to quote implies that the conditions there referred to were exceptional. But they bear every mark of a survival from conditions once generally prevalent.

> Trans-Indus, in the tracts of country inhabited chiefly by Pathán population, periodical redistribution of holdings was by no means uncommon [before the land came under British rule], and the same is stated to have been formerly the case in the villages . . . in the Rawalpindi district. They were no mere adjustments of possession according to shares, but complete exchanges of property between one group of proprietors and another, followed by division among the proprietors of each group. Nor were they always confined to the proprietors of a single village. The tribe, and not the village, was in many cases the proprietary unit, and the exchange was effected at intervals of three, five, seven, ten, fifteen or thirty years, between the proprietors residing in one village and those of a neighboring village. In some cases the land only was exchanged; in others the exchange extended to the houses as well as the land.[1]

British rule has put a stop to these periodical interchanges within the tribe;[2] and the British revenue system, borrowed from that of the Northwest Provinces, has "assumed the village bodies to be joint and entitled to all the land within their local village area."[3] But we have no reason to suppose that that was the primitive feeling of the people themselves; at most it was beginning to be their feeling as the tribal bond decayed, at the time when they came under British rule. Need it be remarked how very different such tribal conditions are from the current village-community idea? And they appear more different still when we add — though it is a minor point — that "most of the tribes brought with them" a not inconsiderable body of "camp followers, dependents and inferiors of various sorts who became (cultivating) tenants." How numerous these may have been we can hardly tell. At present they are certainly fewer than

[1] II, 628. *Cf.* with this Mr. Seebohm's account of the Welsh tribal system.
[2] II, 629.
[3] I, 139.

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the "landlord" families; but there "were many instances where the tribal families were averse to handling the plough, or, at any rate, would only perform the lightest part of agricultural labor with their own hands."[1] This matter of a subordinate cultivating class requires further investigation.

In the central Punjáb there are many villages which have been created by comparatively recent colonization and the multiplication of the founder's family,[2] and some where there was once a superior proprietary body over the cultivators which disappeared during the harsh Sikh rule.[3] But over the greater part of the country there undoubtedly are strong co-sharing village groups, which may, for all we know, have existed in their present shape for some centuries. There are, however, still faint traces of tribal divisions.[4] Moreover, the village groups are strongest when they are composed of men of the same tribe, and especially where these tribes, like the Gujars and Jats, still occupy large areas undisturbed by alien elements.[5] But we are still very much in the dark as to the inner life of these Jat and Gujar villages. The official classification and statistics of the Punjáb are more defective, perhaps, than those of any other part of India:[6] at present "they entirely fail to give us any insight into the really interesting details of tenure."

To sum up. The striking fact about India, from our present point of view, is the total absence, over all but a small fraction of its vast extent, of anything at all resembling the village community of current theory in any of its essential features. There is, indeed, an archaic element in the joint landlord groups of the Northwest Provinces; but that element is the strength of the *family* tie: and village-ownership and family-ownership, frequently as they are confused together, are yet two phenomena which for scientific purposes must be kept distinct. In a small part of the India under British rule — say

[1] II, 642. *Cf.* II, 655: "The Babars, democratic as they are, are yet exclusive, and ordinarily do not themselves cultivate."

[2] II, 666, note. [3] II, 675. [4] II, 668.

[5] See the map opposite II, 671. [6] II, 621–624.

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one-thirtieth[1] — *viz.*, on the northwest frontier of the Punjáb there are peasant communities, but they are the creatures of British rule during the last half century; their own earlier usages belonged to the tribal and not to the village stage. Finally, in a portion of another part of the Punjáb, *viz.*, the tribal areas of the central districts, — in what we may think of as about one-fortieth or one-fiftieth of British India, — we do at last seem to track down the archaic village community. But that is perhaps the part of India concerning which we have least information. In any case we must, as at present advised, regard the village community of theory, not as characteristic of India as a whole, but as "due to the special custom of particular tribes — distinct from the Aryan race that overspread India"[2] — which settled in a tiny corner of the peninsula. And the moral to be drawn from this inquiry — for even a scientific inquiry may have its lessons — is twofold: for India, and for further investigation in general. We want far more abundant and precise information about the Punjáb than we possess at present. And we want to know far more than we now do about the various forms of an institution which much more certainly existed than the village community; and that is, the tribe. But this is a lesson which is being impressed upon us from every side.

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[1] If we reckon the whole Punjáb as about an eighth.

[2] I, 141.

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REVIEWS.

Abraham Lincoln. By JOHN T. MORSE, Jr. American Statesmen Series. Boston and New York, Houghton, Mifflin & Co., 1893. — Two vols., 12mo; vi, 387, vi, 373 pp.

Evidently Mr. Morse has not aimed to write a critical biography. He seems to have confined his studies mainly to previous accounts of Lincoln's life and to a comparatively few kindred works, reviewing their reasoning and judgments, and rewriting the whole story in a tone in harmony with the mellow sympathies but fading superstitions of to-day. Without harshly attacking any of his predecessors, he has gracefully brought Lincoln down from the bewildering altitude where they tried to place him; and we begin to see that the president's qualities, however strange and superior, were always human.

Although this biography is mainly subjective, it carefully excludes all fanciful claims and special pleas; so that when Mr. Morse acknowledges that Lincoln blundered or was mistaken, he has no need to apologize for his frankness. His temper is so good that he will win and hold the confidence of most readers, whatever their previous views of Lincoln. This is because every chapter shows that Mr. Morse has a philosophical confidence, rare among biographers, that his hero's good qualities are so positive and predominant as to warrant absolute candor in respect to his failings.

Excepting, possibly, Mr. Schurz's *Henry Clay*, there has been no biography in this excellent series that will do so much toward cultivating a wholesome taste for historical studies, and at the same time toward showing that biography may be not only choice literature, but also the most fascinating literature. Those who have read the previous biographies of Lincoln will find little new here, except a rare literary art and a good judgment; but they are the readers who will be quickest to appreciate Mr. Morse's merits. Biography may be either an art or a science, but it is generally neither. With Mr. Morse it is an art. Biography of any kind except that which is objective and critical may be the truth, but it can never be or even represent the whole truth. It involves no retraction of what has been said of the work under review, to show how it has failed where a biography of the objective sort might have succeeded.

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The first question that is likely to occur to the thoughtful reader after finishing these volumes is this: Was Lincoln, then, a dictator, an absolute ruler, however benevolent, during those four years? An affirmative answer is not only implied in nearly every chapter of Mr. Morse's narrative, but is directly asserted, in a mild way, in one or two places (vol. ii, 209–210). But such an answer is not justified by the facts. There was a one-man power, but it was only nominal and official, not real. Of all our presidents of vigorous mind, there has never been one whose acts were so often and so completely the resultant of the reasonings of his ablest contemporaries. Lincoln welcomed suggestions from all thoughtful men, and the final opinion which he made the basis of action embraced the best parts of what each one had offered. That is why he differed from all; and it proves that he was the reverse of a dictator as surely as it shows that he was one of the safest of chief magistrates. It was the difference between *one* and *e pluribus unum*.

As a direct result of this idea of the one-man power — of the theory that Lincoln was original and independent in his thought — all other men of the time are but slightly referred to, or passed without mention. Mr. Morse pays hardly more attention to Stanton than if the great secretary of war had been merely a whimsical doorkeeper to the president. Many have criticised Stanton's personal traits, but I know of no one who has ever before so completely ignored his importance. Mr. Morse rarely mentions Seward's name except when he can point to one of his blunders or failings. He has ample space for the particulars of Seward's dreadful proposition of April 1, 1861, and for the ill-advised wording of a draught for a certain despatch; but there is not a syllable about the vital changes which Lincoln accepted from Seward in the draught of the first inaugural address. Had not Seward practically insisted upon those changes, the so-called Lincoln border-state policy — which Seward had actually worked out weeks before Lincoln came to Washington — would have been absolutely impossible. But Mr. Morse describes the policy as appearing some months later and as being the product of Lincoln's foresight. Those who know how intimate Charles Sumner's relations were with Lincoln, and how welcome and at times influential his opinions were at the White House, will think it incredible that his name is mentioned but twice after 1858: once merely in a list of names, and again in a two line foot-note. Yet, Lincoln was with Stanton or Seward almost every minute when other duties would permit, and no other member of Congress had as great an influence over him as Sumner.

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There is no possible room for the plea of lack of space, in accounting for these strange omissions; for the volumes might well have been larger or the military narrative might have yielded to more particulars about politics and persons. Nor will it answer to say that biographies of these men will appear later in this series, and that it is desirable that the narratives should not overlap. The lives of these men were actually intertwined with that of Lincoln, and therefore they deserve specific, if not full, mention in his biography. Otherwise the reader receives a grossly inaccurate impression. Mr. Morse's sins are purely of omission; for where he expresses an opinion we feel sure that he means to be fair. His treatment, at great length, of McClellan is the most positive evidence of this. Nor does he show a restless ambition to give all the glory to Lincoln. We therefore infer that these damaging oversights are probably due to two facts: first, that Mr. Morse has no minute knowledge of the position and influence of Chase, Sumner, Seward and Stanton during these years; and, secondly, that it did not occur to him to test and enlarge upon his authorities where their opinions or their silence did not affect Lincoln personally.

FREDERIC BANCROFT.

COLUMBIA COLLEGE.

Practical Essays on American Government. By ALBERT BUSHNELL HART, Ph.D. New York, Longmans, Green & Co., 1893. — 300 pp.

This is a collection of eleven essays, which, with a single exception, have been published in various magazines since 1887. The author, in the preface, characterizes the book as studies of detached phases in the actual working of the government of the United States. He says that his aim has been rather to describe things as they are than to suggest what they ought to be. The reader must not accept too literally this last statement. It is true that a large part of the book is occupied with a careful and painstaking description of things as they are, or have been, in the practical working of the government; yet there can be no mistake in assuming that in the preparation of these essays the writer was actuated by a patriotic desire to improve our politics.

In the essay on "Civil Service Reform" the author states that he believes the evils of political appointments to be such as will eventually destroy popular government if they are not checked. The essay, however, is not in form devoted to a discussion of methods of checking this evil. It is rather an analysis of the difficulties under

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which the officers of the government work in their relations to the spoils system, and is a specific discussion of the question: Do the people wish civil service reform? To this question he reaches the answer: "Yes, they wish it; but very much as they wish virtue and the rights of man." This article is probably a more effective contribution to reform than would have been written if the author had appeared as an advocate. He comes before us as an impartial searcher after truth; yet he does not attempt to disguise the fact that the truth which interests him most is that which makes for political righteousness.

Quite similar in tone and spirit is the article upon "The Exercise of the Suffrage." Here we are told how we have been acting, as voters, since the formation of the government. All our faults and all our virtues are traced out and recorded. The specific question of compulsory voting is raised, and decided adversely. We are told that our boasted Australian ballot may itself introduce a new and most subtle form of corruption. That is, the briber will simply keep his victim away from the polls. While the essay is not in form a treatise upon the duties of the voter, it is fitted to have the practical effect of such a treatise. Again, under the title, "The Chilean Controversy" (the one essay which has not before been published), we are read some very wholesome lessons upon American diplomacy. It is in the main a description of what did take place in our recent dealings with Chile, yet we are not left in doubt as to what ought to have been done. Another article contains a catalogue of all the sins we have ever committed in disposing of our public lands. Notwithstanding the immense value of the lands owned and disposed of by the federal government, they have been, except for the brief period from 1830 to 1840, a drain upon the treasury of the United States. They have cost the government one hundred and twenty-six millions of dollars more than all the receipts from the sales. In the "Biography of a River and Harbor Bill" Mr. Hart makes known another method of exploiting the treasury of the government.

One fruitful source of defective Congressional action is the lack of a responsible coördinating power. Each house goes its own way, and each committee in each house enters into competition with every other committee for a portion of the attention of the house. In the paper on "The Speaker as Premier," Professor Hart suggests a possible way out of this difficulty. The Speaker has already become the chief of a small group of party leaders, who direct the order of business in the House. This tendency is likely to increase, and it

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may readily happen that when both houses are controlled by the same political party, "some junto, of which the Speaker is the leading member, will arrange a program of legislation for both houses."

It is a sign of better things for our country that just criticism is becoming more and more acceptable to an ever-widening circle of our citizens. It is theoretically possible for men to learn from the experience of others; yet in practice political wisdom has been gained chiefly through actual suffering. Professor Hart shows himself a true historian when, in discussing the indifference of the people to the waste of the spoils system, he looks forward to a time when the conditions of life will be different. "Eventually, as population increases and virgin soil and virgin forests are exhausted, the conditions of life will be more severe, and Americans will feel the cost of government as they do that of overcoats or of butcher's meat." Of course it is utterly contrary to reason that people should actually have to feel the hand of government pressing heavily upon them before they can be induced to attend to elementary political duties. But this is true history. If the sort of literature which is collected in Professor Hart's book should come to be the popular political literature of the country, then it would not be necessary to postpone the gaining of political wisdom to a time when the "conditions of life will be more severe."

JESSE MACY.

UNIVERSITY OF IOWA.

Untersuchungen zur Geschichte der Kaufmannsgilden des Mittelalters. Ein Beitrag zur Wirtschafts-, Social- und Verfassungsgeschichte der Mittelalterlichen Städte. Von Dr. ALFRED DOREN. Leipzig, Duncker & Humblot, 1893. — xii, 220 pp.

Contributions to the history of mediæval gilds and municipalities continue to multiply. We have scarcely digested Hegel's *Städte und Gilden* when we are confronted by such works as von Below's *Ursprung der Stadtverfassung*, Köhne's *Hansgrafenamt*, Pirenne's *Origine des Constitutions Urbaines* and Doren's *Kaufmannsgilden*. Doren's book, like Hegel's, has a wide scope; he deals with the merchant gilds of Western Europe in general. Within his field his generalizations are even broader than Hegel's, and he lays more stress upon the economic and social factors which played a part in the development of gilds. While these features add to the value of the book, they also lead the author at times into a theorizing vein which is fraught with peril. A good example of this will be found on page 59, where he ascribes the wide prevalence of English gilds

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after the Norman Conquest to the old freedom of the Vikings which the Normans transplanted to England.

The same dangerous tendency is displayed in his account of the origin of the gild merchant. Like Lamprecht, he finds its germ in early mercantile caravans. But we look in vain for any solid facts at the basis of this theory. The few stray references, in later documents, to the foreign trade of members of the gild merchant, may merely indicate accretions to the original functions of the fraternity. He presents no evidence to show that the later regulations for the protection of gildsmen abroad are not a mere corollary of earlier enactments protecting the home trade of gildsmen in their native towns; much less does he prove that those regulations are survivals from the caravan period of mercantile life. It is strange, to say the least, that Dr. Doren should cite in support of his theory the records of later societies established expressly for foreign trade (pages 164–165). On page 186 he admits, moreover, that local trade or the home market was the chief concern of the mediæval merchant. On page 39 he also confesses that it will always be impossible to demonstrate the origin of merchant gilds. That is certainly true if we try to seek their germ in some antecedent institution, as he does. The origin of the gild merchant requires no artificial or elaborate explanation. The development of trade, the merchant's need of protection and the mediæval tendency toward aggregation or fraternal union suffice to explain why this institution came into existence. The caravan theory will probably not find much favor. *A priori* it seems quite improbable that an institution like the gild, which is preëminently characterized by the elements of permanency, stability and local solidarity, should have its origin in transient or temporary mercantile expeditions.

But these strictures apply only to a small portion of Dr. Doren's monograph. In the main his work is excellent, and most of his conclusions may be accepted without hesitation. His two opening chapters deal briefly with the origin of gilds and municipalities in general, and with the rise of a merchant class (pages 1–38). He then devotes a chapter to the history of certain typical merchant gilds in Flanders, France and Germany, considering each town separately (pages 39–129). He does this because, as he justly observes, there was great diversity of development even in one and the same country.

In separate sections of chapter iii (pages 130–157) he also examines Nitzsch's views concerning the gilds of North Germany,

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and gives some account of the gild merchant of England. He is right in rejecting Nitzsch's sharp separation of *Gilde* and *Innung*, but his interpretation of the latter's views regarding the relations of the gild merchant to the craftsmen seems to be untenable. His defense of Nitzsch is timely and just. Even if Nitzsch's main results regarding the development of gilds are not worthy of acceptance, he deserves praise for having been one of the first to investigate the subject in a scholarly way, and for having inspired others to follow his example. His remarkable power of historical combination — his ability to divine almost intuitively the hidden currents of history — will always make his essays on gilds stimulating and instructive. Dr. Doren's account of the English gild merchant is also excellent, though it contains no new results of great importance. He throws some light on the economic aspects of the subject by turning to account and interpreting recently published records. His comparisons of the development in England and Germany are particularly interesting. Here, as in most parts of his book, his investigations display much critical insight and sound common sense. He goes astray, however, in some matters of detail; for example, when he says, on page 152, that *firma burgi* was a commutation of royal taxes, and when he states, on page 157, that the English gilds as such were individually responsible for the payment of taxes.

In the last chapter he considers the general development of the gild merchant in Western Europe, its relations to the craft fraternities, and the forces that led to its downfall; and finally he examines its political or constitutional influence. The arguments against the old gild theory regarding the origin of municipalities are clearly and fully stated. He holds that the merchant gild was not the germ of the municipal constitution, though it was an important factor in the development of the civic polity. In some towns its influence was greater than in others. These conclusions are now widely accepted, and there can be little doubt regarding their correctness.

As already stated, the author throughout his book strongly emphasizes the economic and social factors in the development of gilds. Though economics and history have much common ground, an economist like Dr. Doren and an historian like Professor Hegel approach a subject of this sort in quite different ways. The work of the one supplements that of the other.

CHARLES GROSS.

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Les Grandes Compagnies de Commerce. By PIERRE BONNASSIEUX. Paris, E. Plon, Nourrit et Cie., 1892. — iv, 563 pp.

In 1880 *L'Académie des Sciences Morales et Politiques* offered a prize for the best monograph on the great commercial companies. Of the five essays submitted, two were selected as worthy of the prize, and of these one was by the author before us. In view of the increased interest in colonial policy, M. Pierre Bonnassieux has deemed it wise to publish his work, though in a revised form. In the revision the author adopted some of the critical suggestions of M. Courcelle-Seneuil and M. Levasseur. In the first form the companies of each state were arranged alphabetically; in this volume they are grouped along national, geographical and chronological lines. Thus the companies of each state are placed together, and these groups are subdivided according as the scene of their commercial activity was in Asia, in Africa or in America, the companies in each subdivision being discussed in chronological order. The former purely mechanical arrangement is thus displaced by one more scientific and philosophical.

After carefully distinguishing between the commercial associations for mutual protection (such as the mediæval guilds and the Hanseatic League) and the commercial companies of the seventeenth and eighteenth centuries, M. Bonnassieux describes the companies of Holland. Of the numerous Dutch companies, one is of paramount interest to the American student, the Dutch West India Company. The author points out a fact which many of our historians have ignored, that the colonization of New York was not the main, but only a minor object of this company, and that the sources upon which it relied for financial success were pillage and war upon the rich colonies of Spain and its subject state, Portugal. The center of its operations was not North America, but Brazil, and of the conflict there he gives many interesting and valuable statistics. It was thus natural that when once peace was concluded, the ascendency of the Dutch in the regions between New England and Maryland should come to a close.

After narrating the history of the Dutch companies, M. Bonnassieux takes up those of England. He calls attention to one distinguishing characteristic of the English companies. In England the foundation of these corporations was due solely to private enterprise and initiative, while in other countries the government always played an active part in either their foundation or their administration, and frequently in both. The author gives an excellent account

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of the East India Company, justly called by him "la plus célèbre de toutes les compagnies de commerce qui aient jamais existé." It is true his authorities are not original, but M. Bonnassieux has made a careful study of recent English writers, such as Strachey, Trotter and Sir Alfred Lyall.

The weakest part of the book is that devoted to English colonization in America. This consists solely of a translation from Bancroft, uncorrected by recent investigations. Had M. Bonnassieux read Bancroft intelligently and carefully, this would not be so bad; but error after error has crept into the text, due either to superficiality or to mistakes in the French translation used. This portion of the book is worse than worthless, and to support this contention I need quote only one or two sentences. On page 142 is written:

> Les Brownistes notamment, qui s'étaient d'abord réfugiés en Hollande, passèrent au commencement du xvii^e^ siècle en Amérique, et firent le 1^er^ septembre, 1620, un premier établissement dans la baie de Massachusetts, où ils fondèrent la Nouvelle Plymouth. Charles I^er^ reconnut officiellement l'existence de la colonie puritaine de la baie de Massachusetts, et la constitua, en mars, 1628, en une nouvelle compagnie d'Amérique sous le nom de Gouvernement de la baie de Massachusetts.

It would be hard to find more blunders in so few words. Another equally gross error is the attribution of the navigation act of 1660 to Cromwell, who died in 1658.

As we reach that portion of the book devoted to the French companies, considerably over half of the entire volume, we immediately notice a great change. Original sources are quoted, and the narrative has those qualities that betoken mastery of the subject. In contradistinction to those of England, the formation of the French companies was due directly to the initiative of the government, and this, together with the low esteem in which commerce was held, is one of the vital reasons assigned for the failure of the French attempts. The companies were inspired "non des vues du colon ou du commerçant, mais de celles de l'explorateur et du conquérant." A good account is given of the conflict between France and England in India, and full justice is done to Dupleix as the originator of the policy Clive was to carry out so successfully. The ensuing section gives a succinct account of the Austrian, Danish, Spanish, Italian, Polish, Portuguese, Prussian, Russian and Swedish companies.

After the purely historical part, the author discusses in the fifth book the economic principles which lay at the basis of the companies. While the errors in economic theory are pointed out, the

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author wisely questions whether, without the elements of monopoly and privilege, such vast regions would have come under the sway of civilization. In the final book M. Bonnassieux discusses briefly the companies that have been founded in this century on the model of those whose history forms the main subject of his investigation. One of these is the South Africa Company, whose progress in Mashonaland has recently attracted so much attention.

It is a defect in this work that, the arrangement being in a measure encyclopædic, the author has not given enough space to comparing the companies of different states. This is all the more to be regretted, as whenever comparisons are made, they are judicious and go to the marrow of the distinction. The best part of the book is that devoted to France, and it is from this that the book should in the main be judged. M. Bonnassieux is to be congratulated on having freed himself from that chauvinism so characteristic of Frenchmen, whether laymen or scientists; he recognizes the faults of his ancestors as well as the merits of their enemies.

GEORGE LOUIS BEER.

Die Sociologische Staatsidee. Von LUDWIG GUMPLOWICZ. Graz, Leuschner & Lubensky, 1892. — 134 pp.

This little work presents once more, and with a somewhat different application, the thought which the author has dwelt upon at length in a number of earlier writings. Politics, he holds, like the natural sciences, must be studied in the light of evolutionary philosophy, and the origin of law and the state, like that of animal species, is to be found in the struggle for existence.

The fault common to all the great political theories of the past is that they are "*tendenziös*"; they lack the objectivity of true science. The Hellenic idea of the state embodied the longing of the Greeks for political conditions corresponding to their intellectual superiority; mediæval theocratic doctrine and the patrimonial-state theory of the Renaissance developed respectively out of priestly and princely thirst for power; and the individualistic dogma of the social contract was but a weapon with which to crush the absolute monarchs. What is needed is a theory of the state which shall embody not ephemeral purpose, but eternal and absolute truth. To the search for such a theory Professor Gumplowicz addresses himself with great confidence, pausing only to brush aside the "*blühende Unsinn*" of the jurists, in whom he sees the most vexatious obstacle to a sane phi-

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losophy of the state. While exception might be taken on the score of good taste to the author's treatment of these objectionable persons, it is difficult not to sympathize with his complaint that their method reverses the whole direction of proper scientific inquiry: for they go, as he says, from law (*Recht*) to state, while the sociologists go from horde-life to state, and from state to law. The economists come nearer to the true principle of state existence. Yet, while the state is, as they hold, an organization of economic labor — a union of the various classes necessary to production — it is something more. Only in the sociological idea are included all the elements that enter into the essence of the state, with the proper weight assigned to each.

What, then, is the sociological idea of the state? Starting, not from the individual, but from the social group, this idea

fasst den Staat als eine Mehrheit über- und untergeordneter socialen Gruppen auf, deren gegenseitiges Ringen in erster Linie die Erhaltung des Staates, in zweiter Linie eine solche Entwicklung desselben fördert, dass die Daseinsbedingungen der einzelnen Gruppen mit den Daseinsbedingungen der Gesammtheit in Einklang gebracht werden.

The true field of investigation in political theory, then, lies in the strivings for power among these various groups; and the adjustment of powers among them at any given time constitutes the essential law (*Recht*) of the state. Not in the spirit of the individual, nor in a fictitious general will, but in the social elements of the state in their mutual conflict and limitation, is to be found the source of public law. The origin of the state is in the triumph of a group well organized for war over an unwarlike group. The essence (*Wesen*) of the state is "a division of labor (*Arbeitstheilung*), instituted and maintained by force, among various social elements which are united as members of a single whole." The development of this whole proceeds through the struggle of its elements with one another for supremacy. There is little importance here for the individual. So far from being the sole foundation of the state, he has significance only as part of his group.

The author reviews the history of political theories for traces of this idea. He finds from the days of Plato and Aristotle a recognition of various social elements in the state, but not till Machiavelli does he find a near approach to the sociological conception of the relations of these elements. It is not clear why Professor Gumplowicz failed to detect something even nearer in Polybius,

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whose treatment of the Roman constitution as a system of checks and balances between magistrates, senate and people is obviously the source of Macchiavelli's thought at this point. After "*das grosse Wasser der Naturrechtslehre*," Montesquieu and Fergusson are the first evidences of sociological dry land. The latter's work was of especial value; but once more science gave way to expediency, and sociology disappeared till the contract theory and the French Revolution had cleared the horizon. Then came Haller, whose *Restauration* was a true renewal, and whose doctrine, that authority and submission embodied the law of nature more truly than freedom and equality, struck the true sociological chord. But Haller, too, was *tendenziös*, and in the unpopular direction. After him came the "*organische Staatstheorie*," which was the immediate precursor of the sociological idea. The author, however, has only less patience with those who talk of the state as an organism than with the jurists. Since Comte the sociological idea has been in full course of development, but in English and German, not in French philosophy. The political theory of the French, the author takes pains to prove, has gone astray "*in eine Sackgasse der Demokratie*," whence it can be extricated only when it drops its cherished dogmas of liberty and equality.

Two erroneous theories of human development, according to Professor Gumplowicz, have obscured the real nature of the state: first, the monogenistic doctrine — that all races sprang from a single source; and second, that every race alike has passed successively through the hunting, the pastoral, the agricultural and the warlike stages of civilization. More consonant with science is the polygenistic doctrine, and the view that countless distinct hordes, determined by the external conditions in which they respectively develop to the life of hunters, shepherds, cultivators of the soil or robbers, are welded together by collision and conflict, and under the domination of the strongest, into the states known to history. And the same process goes on without ceasing in the highest political life. As the impact of the robber horde upon the agricultural and the resistance of the latter founded the earliest state, so the shock of collision between great landholders and royalty established modern constitutional law, and so the struggle of capitalistic and socialistic groups is shaping the legal institutions of the present day. Inequality in power between social groups is the one invariable condition of state life. Where equality prevails there is no state. The state is in no way the realization of a preëxisting idea of right (*Recht*), but is itself, as the organization of authority, the indispensable premise of right.

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This very incomplete outline of Professor Gumplowicz's philosophy is, I think, sufficient to indicate the importance of his work. Political theorists must take account of sociological doctrine or lose their hold on scientific thought. Herbert Spencer's rather absurd attempt to connect an antiquated theory of the state with a very advanced sociology must not encourage the idea that evolution plays no part in politics. That the work under review aids greatly in rendering such an idea untenable, is not the least of its merits.

WM. A. DUNNING.

An Analysis of the Ideas of Economics. By L. P. SHIRRES. London, Longmans, Green & Co., 1893. — 260 pp.

This is essentially a book of definitions. It undertakes to do a work of great importance, in which complete success is impossible. The author has had experience in the management of public finances, and has been a student of jurisprudence as well as of economics. He was prompted to undertake the present work by the comparative exactness of definition that characterizes the terms used in legal science.

In seeking to improve the definitions used in a science, one may first make himself the master of the concepts of the science, and then search for words to fit them. Mr. Shirres first collates the actual uses of the terms. He finds to what things a name is actually applied, and then ascertains what are the attributes common to these things. A few of the definitions thus attained may give an idea of the merits and the limitations of the method used:

"Wealth means and includes all transferable material things which possess utility, and of which the quantity is limited." If the aim of a definition be simple delimitation, — if it tries only to draw a line that shall include the things that ought to be designated by the term, and exclude all others, — then there is little fault to be found with this definition.

"Interest is the price for a loan of money paid at the expiry of the loan."

"Discount is the price for a loan of money paid at the time of advance."

The word "distribution" is not formally defined; but the author uses the term to designate the work of "wholesale, retail and carrying trades."

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Grundriss der Politischen Oekonomie. Von Dr. EUGEN VON PHILIPPOVICH, Professor an der Universität Freiburg. Erster Band: *Allgemeine Volkswirtschaftslehre.* Aus Handbuch des Oeffentlichen Rechts: Einleitungsband. Freiburg, J. C. B. Mohr, 1893. — Large octavo, 348 pp.

The German professor is nothing if not encyclopædic. This book has all the good points of the scientific German treatises on political economy. It is systematic, exhaustive and fully equipped with references to the standard authorities. Each question is followed out completely, nothing is omitted or glossed over, difficulties are fairly stated, the varying opinions of other writers are cited, and the position of the author himself is exactly defined, especially where it differs from the commonly accepted views. The book is also well written. To an American reader, however, there seems to be a trifle too much classification and exhaustiveness. There is such a thing as classifying too far and saying too many things. The divisions may be perfectly logical and the statements undoubtedly true, but they obscure the thought instead of illuminating it. For instance, the classification of wants or needs into those for the necessaries, the comforts and the luxuries of life is useful and enlightening. The further subdivision of wants according to time into "kontinuirliche, periodisch sich wiederholende, unregelmässig aber vorausberechenbar, unregelmässig und nicht vorausberechenbar auftretende Bedürfnisse," even if logical, is rather burdensome to carry around with one. Goods, according to the author, are either free goods or economic goods. The latter are divided into "immediate" and "mediate," according as they satisfy human wants directly or only after further manipulation. Goods may further be divided into *Güterordnungen*, and we may speak of goods of the first order (*Genussgüter*) and goods of further orders (*Productivgüter*). Productive goods are further divided into land and capital. I will not follow the author into the classification of economic organizations into "*verkehrswirtschaftliche Wirtschaftsorganisationen*" and "*gemeinwirtschaftliche Wirtschaftsorganisationen.*" They include the family, the state, the church, clubs, *etc.*, and may be public or private, compulsory or voluntary, *etc.* Much of this seems unnecessary, especially when we consider the special purpose of this "introduction."

The purpose for which this book was designed is a very interesting one. It forms part of a general introduction to the great Marquardsen collection of works on the constitutional law of different

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states. The rest of the introduction consists of a general history of political science, a general theory of political science and a volume on statistics and sociology. The interesting point is the recognition of the connection of political science with political economy and sociology, making a treatment of the latter subjects desirable in a complete system of political science and constitutional law. It is obvious that such treatment should be in accordance with the special object to be attained. Professor Philippovich recognizes this in his introduction, where he says:

> Ueberall wird die rechtliche Grundlage der wirtschaftlichen Probleme, sowie deren Rückwirkung auf die Rechtsentwicklung berücksichtigt, ohne bei dieser besonderen Beachtung der praktischen Seite der wirtschaftlichen Fragen deren theoretische Erörterung zu vernachlässigen.

It seems to me that Professor Philippovich lost a great opportunity when he did not frankly abandon the accumulation of hair-splitting definitions and literary historical citations which we find in all German political economies, and address himself to the great task, which has never yet been adequately fulfilled, of showing the economic foundation of political institutions.

It is hardly fair to criticise an author for what he has not done, without reference to his positive achievements. There are many interesting things in the present book. Professor Philippovich has an exalted notion of the scope of political economy. He believes (if I follow his thought) in economic history, in a descriptive political economy, in a pure (exact, isolated) theory of political economy, in an empirical or realistic theory of political economy and in an applied political economy (*Wirtschaftspolitik*). It would seem to be somewhat difficult to hold the two theoretical political economies apart. The exact difference, in the words of the author, is as follows: "Zeigt uns diese das Wesen der rein wirtschaftlichen, der nur auf wirtschaftlichen Motiven beruhenden Erscheinungen, so jene ihre empirische, durch andere gesellschaftliche Beimengungen beeinflusste Wirklichkeit." In thought the difference is plain enough, but in carrying out an empirical theory one would seem to approach very near to a descriptive political economy on one side and an applied political economy on the other.

The present volume would seem to be the empirical theoretical political economy. It is to be followed by a second on economic and financial policy. The first book of the present volume considers the conditions of development of economic life (*Die Entwicklungs-*

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bedingungen der Volkswirtschaft). Among these are the land, population, the state and other social organizations, the division of labor, the personal qualities of men, the development of science. The last book is devoted to social political parties, the socialists and others. The three books between contain the systematic political economy arranged under the rubrics: *Produktion und Erwerb; Der Verkehr;* and *Einkommen und Güterverbrauch.* The views of the author are for the most part moderate and sound. He rejects the so-called quantity theory of the influence of money on price-building, but I cannot discover that he has any theory to take its place. He overstates, as it seems to me, the evils of a contracting currency and the blessings of an inflated one. The theories of rent, interest, profit and wages are stated with great care and with full knowledge of the latest speculations on those subjects.

RICHMOND MAYO-SMITH.

Le Leggi Naturali dell' Economia Politica. GIUSEPPE MAJORANA-CALATABIANO. Roma, Ermanno Loescher, 1890. — 304 pp.

In these years, when there is so much said and written about the relativity of economic doctrine, the appearance of a book entitled *The Natural Laws of Political Economy* will raise pretty definite expectation in the minds of readers. In such a work one will naturally look for a discussion of those coëxistences and sequences in the field of economics which resemble most closely the constant and universal laws of natural science. And such expectation would certainly be encouraged by a reading of the preface and introductory pages of Professor Majorana's book. There are here, and indeed in all parts of the book, formal and informal definitions of the terms law and natural law, and in all it is implied that the natural laws of economics are "necessary, eternal, unchangeable, universal" (page 29), "necessary relations springing from the nature of man and of things" (page 284). Yet although the author writes thus whenever he formally faces the question of the character of natural economic laws, he does not carry into the discussion of specific topics the concept which his former definitions are likely to suggest. By natural laws of economics he means, as his full discussions show, not merely those laws which hold true regardless of man's will, like the law of diminishing returns, and those describing actions in which the motives are few and simple, and the results, therefore, constant. He means to include among natural laws all statements of those economic relations which result from men's unrestricted pursuit of

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individual interest — from those courses of conduct in which they are conscious of no purpose to direct the development of the social organism. To this assumption that whatever is, is natural, there needs to be added but the one other assumption, that interference with nature is injurious, and we have the simplest outline of Professor Majorana's defense of the present industrial order.

In the first of the seven books into which the work is divided Professor Majorana gives a brief historical sketch of the notion of natural law in economic relations.

It is in the second book that the author begins his theoretical discussion; and here is found an examination of the general character of natural economic laws. Defining the natural laws of political economy as "the necessary relations springing from the nature of man and of things in the field of wealth" (page 46), he goes on to develop their scope and meaning. If any unfavorable criticism must be passed upon this most important part of the work, it is that economic laws are made to resemble too closely the laws of natural science. So, in writing of the perpetuity of economic law, the author does not hesitate to say that human nature, so far as it is a source of economic law, is unchangeable (pages 58–60). And he even asserts that the laws of political economy are statements, not of tendency, but of actual fact. Even this assertion, however, does not prevent him from recognizing the influence of economic progress; but this influence he finds, not in the abrogation of earlier laws, or any part of them, but simply in additions to them. The old laws remain; new ones are evolved.

So far the treatment of the subject is what might fairly be expected from the title of the work. It is, perhaps, difficult to see how a very large body of economic laws could be collected which should satisfy the conditions of necessity, universality and perpetuity; but that there are some such, can be admitted. Indeed, in the discussion of particular laws, with which the greater part of the work is taken up, Majorana gives formal statements of what he calls the natural laws of labor, value, *etc.*, — statements which, whether they are worthy to be called scientific laws or not, are beyond doubt universally and eternally true. So his law of labor seems reducible to this, that men must labor in order to satisfy their needs (page 83). His law of value is, that nobody will give for an article the embodiment of more of his labor than would suffice to produce the article directly; and his law of property is the familiar statement that property rights, something like the present, are a necessary condition of production (page 87). These and the similar formulæ for the laws

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of capital, *etc.*, are certainly true enough; but they are only vague statements of familiar fact — they cannot fairly be called economic laws. But the author goes further. About each of these misty truisms he gathers a body of other statements, constituting in their totality something like an outline of the orthodox economics of a generation ago; then he quietly transfers the qualities of necessity, perpetuity, universality and the rest to these more particular propositions. His task thus shows itself nothing less than a justification of the existing industrial system on the grounds of naturalness and necessity. It is true that he does not bring all of what is usually known as economic science within the scope of his natural laws; but he offers no logical reason for drawing the lines as he does.

It is needless to follow in detail the presentation of the laws of property, value, production, capital, division of labor, machinery, money, credit, liberty, competition, distribution, rent, interest, profits and population. The formal statements are indefinite truisms; and in the expansions and explanations which regularly accompany them there is no separation of what is necessary and constant from what is contingent and transitory.

If the author at times gives too wide a range to natural economic law, he at other times seems to understand by natural law something quite different from a statement of fact, and more like the positive enactments of legislators. So he frequently writes of violations and penalties. The same idea is involved in his formal statement of the law of labor (page 125), and even more clearly in his law of production (pages 130, 135). The injunction, that in production the aim should be to secure the greatest return for the least outgo, is certainly excellent advice, but it is not a law in the scientific sense.

The presentation of doctrine is, so far as it goes, clear and pleasing. As a résumé of the old classical economics, it is worthy of high praise. But certainly one will look in vain for any grounding of real economic laws in nature.

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The Origin of Metallic Currency and Weight Standards. By WILLIAM RIDGEWAY, M.A., Professor of Greek in Queen's College, Cork. Cambridge: at the University Press, 1892. — 417 pp.

For the last half century scholars have generally acquiesced in the opinion of August Boeckh that the weight standards of antiquity — and therefore of modern times also — were originally obtained scientifically, *i.e.* by the conscious choice of an arbitrary unit, and its

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subsequent multiplication and division. Whether this feat was performed by the Egyptians, with their gift for geometry, or by the Babylonians, with their gift for astronomy, has been warmly debated. Most "metrologists" have been inclined to give the credit to the Babylonians, and to suppose that from them all other nations borrowed. And the way in which the Babylonians arrived at their standard, according to one of the most distinguished of our authorities, Dr. Hultsch, was as follows: From the sun's apparent diameter they got the royal Babylonian ell. The cube of this gave them their *maris*, a measure of capacity. The weight of one-fifth of this in water furnished the royal Babylonian talent, which was divided into sixty minæ, and each mina into sixty shekels.

It was inevitable that sooner or later this elaborate and artificial structure should topple down. It was the creation of a generation which the action of the French republic had accustomed to the idea of a purposed establishment of a metric system, and which had been carried off its feet by the new discoveries in Chaldæa and Assyria. And surely the supposition that the world remained without standards of measurement until one day men said: "Go to, let us have measures. Suppose we take the sun's diameter, and then make cubes from it"—belongs altogether to what may be called the ante-evolutionary period of archæology.

But although a critic could have said this, as a matter of fact no one did before Professor Ridgeway. To Professor Ridgeway belongs the credit of seeing that here is a field to which, somehow or other, the comparative method has never been applied. Everybody nowadays is going to the existing practices of savage or uncivilized tribes to find clues to the origin of everything, from religion and the family down to fairy stories; why not do the same for the origin of currency and measures? This is what Mr. Ridgeway has attempted with eminent success.

He points out that in early or barbaric society a currency arises out of barter simply from the great importance attached to whatever may happen to be the staple commodities, as, for instance, beaver skins in the Canadian North-West. Now the thing in most general request among all the Aryan (and among many non-Aryan) people was the cow; and consequently, as Mr. Ridgeway shows from evidence as different as Homer and the Brehon laws, the cow was originally the most important standard of value. There was, he argues, probably sufficient trade to attach to the cow everywhere on the European and Asiatic continent much the same estimation.

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But the standard gold coin of most ancient peoples was, also, strikingly uniform in weight, varying only from 135 to 120 grains. The probability, therefore, is suggested — and Mr. Ridgeway adduces evidence which almost makes it a certainty — that the standard gold coin of the ancient world represented, and took the place of, the cow as a unit of reckoning.

But how was the gold itself weighed? Mr. Ridgeway shows us, from the usages still current over a large part of the world, that standards of weight usually start independently from the two ends, the very heavy and the very light, with at first no recognized connection between them. Thus many nations have for heavy burdens the unit of a man's load, and for light weights the seeds of some plant; and then at a later stage, or under the influence of other and more advanced nations, work out the arithmetical relation between the two. For the weighing of gold, wheat-corns or similar grains seem to have been almost universally used.

Mr. Ridgeway pursues the supporters of "the old doctrines" into the recesses of their arguments, and pours forth a wealth of learning with regard especially to the early Greek coinages, which will make his book hard reading to any but classical scholars. But, besides his main theme, he gives us much of miscellaneous interest concerning savage and barbarous currencies which even the non-classical reader can enjoy. He shows, moreover, in an entertaining way, that many of the "types" of Greek coins, which have hitherto been regarded as religious emblems, such as the tortoise of Aegina and the shield of Bœotia, were in all probability nothing more than the staple products of the respective localities.

The work is one which will arouse and which will need careful criticism in detail; but its main principles are more important than any of its specific conclusions and will doubtless find general acceptance. These principles are, that standards of weight and currency arise unconsciously and spontaneously from the everyday usages of primitive peoples; that such peoples employ for the purpose whatever nature furnishes near at hand; and that resemblances are due largely to the similarity of situation and need. Professor Ridgeway will enjoy the deserved repute of having been the pioneer in a new and fertile field of research, — of having written a work to which the much abused term "epoch making" may with complete justice be applied. And no student of social development can afford to be indifferent to a book which widens — as this does so greatly — the area of influence to be assigned to economic motives and forces.

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Teoria della Trasformazione dei Capitali. Di CAMILLO SUPINO. Torino, Fratelli Bocca Editori, 1891. — 126 pp.

In the preface to this treatise, the author tells us that, while many economic theories are based upon the possibility of capital's passing from one form of industry to another, yet few writers who appeal to the principle "concern themselves with explaining how the movement takes place." A few ideas respecting it are found in the principal economic treatises; "but," he continues, "no one, that I know, has devoted a special study to the various methods of the transformation of capital, to the causes which determine it, and to the obstacles which impede it." To fill up this gap in economic science is the object of the present work, the author believing that such an investigation has practical and scientific importance, and great utility for both economics and finance. But, notwithstanding this practical importance, his work is wholly theoretical.

In the execution of his task Signor Supino has given us a well-arranged and systematic treatment of the leading phenomena in the movement of capital, which is always "tending," in obedience to the law of self-interest, towards the more productive employments. His explanations of the principles involved and their working are always lucid, and his style is always clear. If there is little or nothing new in the way of facts or principles, the author is entitled at least to the credit of having skillfully grouped them about a central thought, thus bringing scattered truths together in a connected whole. The various classes of phenomena are treated in separate chapters, and each group is analyzed with more or less detail; but it is not pretended that the analysis is exhaustive or the treatment complete.

Chapter I traces the transformation of wealth into capital, and shows how this is facilitated by the use of money. Then in the three following chapters are treated respectively: The transformation of capital through the agency of monetary capital, or the movement of "momentarily disposable capital"; the transformation of capital employed in industries, or fixed capital whose placement is influenced by prices and profits; the transformation of capital employed in investments, as lands, houses and public values, — or fixed and movable capital whose transformation is effected only through purchase and sale. Then follows a chapter on the causes of the transformation, which are principally, though not wholly, technical or economic; and finally, the last chapter treats of the obstacles which impede the transformation. These are either

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inherent in the employments, as differences in risks, attractiveness and aim; or external influences — obstacles of a moral, economic or juridical nature.

On some minor points, which do not affect the general argument, exceptions might justly be made. For instance, the statement that "the custom existing in certain countries, of giving long credits, retards the circulation of capital" (page 58) is hardly true without qualification. No doubt it retards the flow of money. But does it of capital? Possibly the statement is due to the author's strong inclination to regard money as capital. At any rate, he says, it is "latent capital" (page 24). Again, counteracting influences are overlooked in the statement that the existence of any given railroad is an obstacle to the building of another running in the same direction. This may be true of the European railroad system, as it may be the dictum of the highest economic interest of the public; but the parallel roads in this country have demonstrated that a speculative mania will defy the public interest for a selfish gain, and convert the "obstacle" into an incentive. Still, as a "tendency," or indeed as a rule, the statement may be conceded.

A more questionable position, though supported by the high authority of Pantaleoni, is the distinction made between cultivated land and building sites in cities. The latter are regarded as capital — a part of the cost of the buildings, but their value does not depend on fertility, and hence is not subject to the law of diminishing returns. Having a monopoly value, their rent is a monopoly rent. On the other hand, cultivated land is not capital, because not a product, does depend on fertility, and so is subject to the above law. And further, it yields differential rents (page 64).

It is difficult to see the ground of these distinctions. If the cost of a building site is part of the total cost of a building, and any increased income is but "the normal interest of the increased value of the capital"; and if the proof of this is found in the fact that in selling the owner capitalizes this increased income (page 68); the same is true of the increased income from cultivated land near a city. Both alike will capitalize the increased returns; but for all that, to the owners these returns are alike differential returns, or rents, due to monopolistic advantages, and are not the normal returns to capital in the strict sense. If in the one case increased returns are to be considered as only the normal interest of the increased value of capital, the same must be true in the other case, and then the whole phenomenon of rent at once disappears. To a purchaser the

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whole return is, no doubt, normal interest on capital invested; but any increase, economically considered, is a rent due to a differential advantage of a monopolistic character, as is the case with all rents, including the quasi-rents of capital, labor and the *entrepreneur*. But since the monopolies differ in character, they may be greater or less hindrances to the movement of capital.

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People's Banks. A record of Social and Economic Success. By HENRY W. WOLFF. London, Longmans, Green & Co., 1893. —xvi, 261 pp.

That amiable weakness of the French people for impracticable ideas, has, we are constrained to admit, stamped itself upon their practice of coöperation. So when Mr. Wolff seeks to chronicle "a record of social and economic success" in that same illusive form of masquerading socialism on which an emperor has smiled, he has had to abandon Gallic soil, as the home of mere theories — as beautiful, but as finely spun as Venetian glass. His book, accordingly, is a study of German and Italian methods for the accomplishment of those startling results in credit coöperation, the statistics of which, for the continent, reach in dollars to ten figures annually.

While no one has satisfactorily defined the word to which Robert Owen gave currency, it is universally recognized that there are three forms of the practice of coöperation, *viz.*, for distribution, for credit and for production. But it would be easy to demonstrate that neither the English "wholesales" nor the "people's banks" involve real coöperation; though there is no doubt that both are useful and astonishing aids to civilization. Coöperation for production, then, is the only form which can satisfy a scientific definition, and it is now many years since cautious economists have pronounced that form, on which they founded such high hopes, to be a lamentable failure.

But the point at which the French began Schulze-Delitzsch hoped to attain only after a long series of successful experiments, and him the Italians have followed, *more tedesco*. To this fact only can the pæan of Mr. Wolff's book owe its reason. There are two plans of campaign which have influenced the growth of the people's banks — that of Schulze and Luzzatti, which may be characterized in M. Léon Say's phrase as seeking the "*démocratisation du crédit*"; and that of Raiffeisen and Wollemborg, which is essentially in a line with that naïve and priestly attempt (so deliciously French) to

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"*moraliser les affaires*" — the Catholic Banks of the R. P. de Besse.

Mr. Wolff has carefully studied both these schemes and his work is consequently valuable in the literature on this subject. While he vaunts the "generally accepted superiority of the Raiffeisen system" in conclusions into which we cannot follow him, yet he deserves only praise for his recognition of the leadership the Italians have taken in the conduct of these "poor man's banks." In Lombardy history finds the origin of the modern business methods of the world, and there to-day has been perfected a system of banking, racy of the soil, of inestimable value to a usury ridden people, and in its triumph asserted to be "*la réalization de l'idéal coopératif.*" But, it may be said, as there is nothing ideal about it, so is there nothing coöperative.

FAIRFAX HARRISON.

Profit-Sharing and the Labor Question. By T. W. BUSHILL. London, Methuen & Co.; New York, Charles Scribner's Sons, 1893. — 12mo, 262 pp.

Mr. T. W. Bushill is a manufacturing stationer of Coventry, England, whose firm employs some two hundred work-people, with whom it has for five years practised a system of profit-sharing. This volume is a contribution of extreme value to the literature of its subject because of its very practical character. Mr. N. O. Nelson of St. Louis is the only other English-speaking profit-sharer who has hitherto made known to the public with any fullness his method, its operation and the results of the system. Mr. Bushill has given us here a much fuller treatment of the general matter, and a far more detailed statement of the practical workings of the system in use in his establishment. The book originated in the testimony given before the royal commission on labor. The substance of this testimony is given in the first chapter in a condensed form; in chapter ii follows the cross-examination; four annual addresses to the employees and extracts from correspondence close the first division of the book.

Mr. Bushill then proceeds to discuss the profit-sharing system as a whole, its principle, its present standing (including a list of seventy-five English firms giving a bonus to the workmen) and its relation to other systems. The estimate of profit-sharing, on page 146, is moderate but confident:

> I do not regard it as an "end," but as the "next thing." It is the best immediate means known to me for elevating the lot of the workers . . .

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As compared with schemes for municipalising labour and so on, it is modest and commonplace, but it has the advantage of being immediately practicable.

This judgment is confirmed by the work-people themselves in the "ballot opinions" which were given by Mr. Bushill's employees, every precaution being taken to secure the independence of the replies to the three questions submitted to them. These "ballot opinions" are of extreme interest, giving as they do a kind of testimony from the workman's side which has hitherto been lacking.

In several additional chapters Mr. Bushill expresses in reference to various labor questions the sagacious views of a philanthropic employer who has the great advantage of knowing his own business thoroughly and of sympathizing with the desire of the workman to "get on" in the world. An appendix contains the rules of the firm and much other matter of use to the employer contemplating the introduction of the system. Mr. Bushill has provided an invaluable supplement to the works of previous writers on profit-sharing, and has greatly strengthened the argument for its extension by this practical, judicious and comprehensive little volume.

NICHOLAS P. GILMAN.

The Repudiation of State Debts. A Study in the Financial History of Mississippi, Florida, Alabama, North Carolina, South Carolina, Georgia, Louisiana, Arkansas, Tennessee, Minnesota, Michigan and Virginia. By WILLIAM A. SCOTT, Ph.D. New York, Crowell & Co., 1893. — x, 325 pp.

This book consists of three parts. The first chapter treats of the constitutional and legal aspects of repudiation. It is, in the main, a brief review of the leading judicial decisions on the constitutional right of the states, under the eleventh amendment, to refuse to answer to a civil suit in the federal courts. In addition, the author shows that, with four or five possible exceptions, the states have not provided any other tribunal before which the justice of claims against their treasuries may be tried.

Then follow five chapters descriptive of the cases of repudiation since 1841 in the twelve states named in the title. Under the term repudiation, the author includes "cases of the 'scaling' of debts and of refusal to pay bonds which are not valid obligations of the states, either from a moral or legal standpoint." This definition he construes broadly enough to cover cases of refunding, as, for example,

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that of Alabama in 1876. Only a part of this act, that which left certain state indorsements unprovided for, can fairly be called repudiation. The author, moreover, omits mention of some acts by which certain of the most flagrant cases of repudiation were mitigated; for example, the consolidation of Louisiana's debt in 1884, at four per cent, — an act which removed a great deal of the odium of the repudiating act of 1879, in accordance with which that rate of interest would not have been reached until 1900.

The third part of the book is on the causes of repudiation and the remedies therefor. These chapters are of the most general interest. Dr. Scott does not go back of 1837 in his search for causes. But the influences tending toward repudiation were observed at an earlier date than that. Alexander Trotter, writing in England three years before the first case occurred, was able to prophesy that many states would rather repudiate than burden themselves with taxes, and that this would be more likely to occur in the Southern states (as it did) than in the Northern.

Mr. Scott finds five causes of repudiation: (1) Illegality, alleged or real, in the issue of the bonds; (2) the heavy pressure of debts on the repudiating states; (3) the corruption of state officials; (4) the financial crisis of 1837; (5) the Civil War. These, however, are the pretexts or occasions, rather than the causes, in a scientific sense. The fact that the general movement was foreseen should have shown the author that its real causes were more remote than those alleged. These cases of repudiation are cases where the states enjoyed credit based on an erroneous judgment as to their willingness and ability to meet their obligations. To find the causes of this we must ask, first, how that credit came into existence; then, why the creditors' confidence was misplaced. The creditor forms his estimate of the ability of the state to pay chiefly on the supposed value of the existing or the anticipated revenues. An inquiry as to the relation of the debt to the revenues reveals most of the fundamental characteristics of the debt. According to Mr. Scott's own showing in the presentation of the several cases, repudiation followed upon the failure of some specific revenue appropriated to the payment of the debt charges. For the payment of the interest the states generally relied on the returns of the productive investment which they had made of the borrowed money. Some of the states had revenues from the sale of public land; few possessed any adequate system of taxation. Since the states were dependent for future prosperity on the increase of their population, it was wholly contrary to their interests

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to introduce taxes which might repel immigration. A failure, therefore, of the enterprises in which their borrowed money was invested, left the states without means. Mr. Scott has stated the reasons for the confidence of creditors, especially of European creditors, in the success of these enterprises, but he fails to grasp the full significance of this fact. Over-confidence of others in the resources of the states led to over-confidence of the states themselves in those resources. The states took their credit as the actual measure of what they might safely borrow. Their debts contained within themselves the power of reproduction. Interest charges were met by new loans. No plan for repayment was undertaken before 1840. In the first period of repudiation, then, an incorrect estimate by the creditors of the resources of the states must be taken in connection with the subordinate influences mentioned by Mr. Scott, to make an adequate explanation of the causes. In the second period, *i.e.*, since 1870, as Mr. Scott correctly points out, repudiation was chiefly due to the misgovernment of the Reconstruction period.

But the chapter on the "Remedies for Repudiation" contains the most matter for criticism. Mr. Scott passes over with a few words the remedy which has been applied by the practical wisdom of the people, namely, constitutional limitation of the debt-making power. Should any purpose like forest-culture, irrigation or control of natural monopolies, make it desirable for the states again to incur large debts, the author proposes to insure the creditor in his right by the old common law remedy for the wrong. Believing that the repeal of the eleventh amendment is impossible, Dr. Scott proposes that each state shall, by constitutional or other enactment, vest in its courts or in some special tribunal the power to execute judgment against the state in one of the two ways now applicable to delinquent municipalities, *i.e.*, either seizure of the property of any individual inhabitant, or compulsory taxation by writ of mandamus. When we recall that in many cases repudiation was effected by constitutional enactment, and that such a method is always open to the people, the value of the proposed remedy shrinks materially. Moreover, the treatment of bankrupt municipalities by the courts has not been such as to inspire much confidence in these measures.

Mr. Scott has failed to grasp the importance and real significance of the constitutional limitations now in force. Nor does he understand the weakness and lack of permanence in state constitutional law. The people do not intend that these constitutional limitations shall prohibit debt-making for objects which meet with general

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approval. The whole drift of this constitutional law-making shows that they do intend to establish a healthy relation between the debt and the revenues of the state. They have made these restrictions so sweeping because they believe in lessening the functions of the state governments. They do not intend that these governments shall handle large revenues unless under direct popular supervision, and hence the debts must be correspondingly small.

Without a repeal of the eleventh amendment, the only safeguard against repudiation lies in the sound principle of financiering, which refuses to allow the debt charges to exceed the means of the state, and in a healthy and honorable popular sentiment in regard to the debt.

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Systèmes Généraux d'Impôts. Par RENÉ STOURM, Ancien Inspecteur des Finances. Paris, Guillaumin et Cie, 1893.—415 pp.

M. Stourm has long been favorably known as the author of an excellent work on the budget, as well as of the classic study on the *Finances of the Old Régime and the Revolution.* It was natural, therefore, to expect that this new book on *General Systems of Taxation* would be an important contribution to science. As a matter of fact, the work proves to be quite insignificant.

As in all the writings of M. Stourm, the reader will find, indeed, a simplicity and clearness that leave nothing to be desired. But the simplicity is in this case largely due to superficiality. To the student who knows anything of the complexities of many of the problems, the *sang-froid* with which whole classes of arguments are either absolutely ignored or coolly brushed aside is almost appalling. That M. Stourm should be a conservative of the conservatives, is perhaps not surprising; but that he should treat the arguments of his opponents so cavalierly, is disheartening. The chief defect of the work, however, is its extreme insularity. Although the book abounds with references to French works, but a single foreign author on finance is mentioned later than John Stuart Mill, and that one, an American, in a wrong connection and with an absurdly mutilated title. Not a word as to the immense contributions to theory made by the German, the Italian, the Dutch and others during the past ten or twenty years.

And even as to the practical discussions, with a few minor exceptions we find little that has not already been printed in other French

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works. It may be said in extenuation that the book was meant to explain the French system of taxation. But there is nothing in the title to suggest this; and even in a discussion of the French system some regard should be paid to general theory. Of the errors of fact it is not worth while to speak. One example will suffice: The system of direct taxation in America is mentioned as a warning example of the "mixed system," or combination of the income tax with the property tax (page 195), while the general property tax, or "*impôt sur le capital*," is said never to have existed alone anywhere (page 64). Each of these statements is absolutely false.

E. R. A. S.

Protezionismo Americano. By Professor Ugo Rabbeno. Milan, Fratelli Dumolard, 1893.—8vo, 512 pp.

The subject matter of this work is comprised in three parts. In the first of these the policy of Great Britain during the colonial period is discussed at great length, and in a manner which shows that the author has made a comprehensive study of the literature of the subject. Yet his conclusion, "that the American Revolution was directly caused by British industrial policy, rendered incompatible with the changed economic condition of the colonies," seems to me an untenable confusion of occasion and cause. Would it not be a truer statement that the colonies constituted a mature political entity, which was bound to become an independent nation in any case?

The second portion of the book is devoted to the subsequent history of protection in the United States, covering the period from 1789 to 1889. The most notable feature here is a full discussion of the subject of trusts and monopolies, in which the learned author shows an intimate acquaintance with our literature. The conclusion drawn is, that the cause of great industrial consolidation lies not in protection, but in the industrial depression of the last twenty years, which is at the same time the cause of the recrudescence of protection since 1860. What then, it will be asked, is the cause of this industrial depression? And this at once brings us to the key-note of the whole book.

Professor Rabbeno believes that his work "has certainly the merit of being objective and absolutely free from all preconceived ideas." This might be granted from a study of the first portion of the book, but in this second part the conviction is forced upon one that the

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unconscious tendency is always toward a justification of the so-called "system" of Professor Loria. This may be due to the fact that Dr. Rabbeno has been so closely identified with Loria's views, and has been the authorized exponent of them in this country. Be that as it may, the present work seems more like an illustration of these theories than like the result of independent research. Moreover, many of the so-called "principles" seem mere truisms to students of historical method and of American history. For instance, the conclusion drawn from a study of the colonial period is "that the British prohibition of manufactures was historically rational and expedient." This "profound truth" accredited to Professor Loria is for us nothing more than a fundamental tenet of the historical school, which finds the justification of social institutions in the mere fact of their persistence through a long series of years. Again, the theory that abundance of free land tends to prevent the growth of manufactures, by maintaining a high rate of wages, was not first enunciated by Professor Loria. It was a favorite idea of our own Dr. Franklin, and is repeated in Gallatin's famous report of 1810. Professor Rabbeno has, however, elaborated the theory, and in fact the whole book is based upon it. It is the absorption of all the free land, he says, which throws capital and energy into manufacturing industry, whereby prices are depressed. As a consequence, goods made under such conditions can compete successfully with those produced in new countries where free land still exists. Free trade accordingly becomes the natural policy of all European states.

The author thus takes his position squarely by the side of Loria and Ricca-Salerno in holding "that protection finds the reason of its being in capitalistic production." Protection becomes, then, an invention of the capitalist class; it is "an effect and not a cause of industrial depression." It naturally comes to the front at two stages of industrial evolution: first, at the period of transition from domestic to capitalistic (agricultural or industrial) methods of production; secondly, when the absorption of free land, the pressure of population and the accumulation of capital begin to reduce profits, and capital seeks to maintain its former favorable position. Such reduction of profits, says the author, is a feature of the permanent depression of the last twenty years; and it has induced the recent outbursts of protective fervor all over the civilized world. These two periods in our history, marked by a dominance of the protective spirit, are found to culminate in 1824–28, and in the two decades since 1873. It was but natural, says Professor

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Rabbeno, that the interval should be one of comparatively low tariff duties.

The third portion of the volume is devoted to the history of the economic theory of protection. It is made up of a criticism of Alexander Hamilton, Frederick List, Henry C. Carey and finally of Professor Patten, these being taken as typical theorists. Here our author appears at his best, and gives a keen and exhaustive analysis which well merits examination. As might be expected, Professor Patten's theory of the relation of rents to international trade is the main point of interest. And the theory that "in an exporting country free trade tends to raise the rent of land" is held "from the abstract point of view as absolutely unassailable." Unfortunately, says our author, rents appear to be rising side by side with the increase of tariff duties, and industrial protection cannot long endure unless the farmers are indemnified by an increase of duties on their products, — a truth, be it observed, which the recent Méline tariff of France amply illustrates.

Despite most destructive criticism, our author admits that the theories of Professor Patten really correspond to two great features of American civilization: first, the enormous extent and variety of our land area, demanding a new conception of consumption if we are to utilize its vast resources; and second, an unconscious foreboding of the impending doom of manufacturing industry in face of the persistent fall in profits and the rise of rents. Protection, he says, marks a struggle between the landowner and the *entrepreneur;* and there will be no settlement of the difficulty under the present system of landowning and production.

The famous statement with regard to the arithmetic of the customs which the author quotes from Professor Ely, should be credited to Dean Swift.

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The Mark in England and America. A Review of the Discussion on Early Land Tenure. By ENOCH A. BRYAN, A.M. Boston, Ginn & Co., 1893. — viii, 164 pp.

It is not quite clear for whom Mr. Bryan has intended his brief sketch of the mark controversy. He certainly would not presume, in view of the limited study he has given to the matter, to speak to specialists, and his style, manner of treatment and knowledge of the relative importance of the various parts of his subject to each other

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and to present politics, make the book an unsafe guide for beginners. The economic side of the question has now become so important historically, that a good preliminary sketch of the subject would be extremely useful and, it is to be hoped, will be some day forthcoming. The difficulty with Mr. Bryan's book is that it gives an entirely false impression of the present state of some phases of the controversy, and he treats the pro-markists in so disagreeable a manner as to bespeak the partisan. A word of explanation will illustrate my meaning.

The student who gets his first knowledge of the mark theory from this work will infer that M. Fustel de Coulanges and Mr. Seebohm are absolutely and unqualifiedly right, and that no scholar of any importance or any respect for his historical reputation would still presume to hold other views than theirs. It might surprise such a reader to learn that these views, which in Mr. Bryan's book exclude all else, are after all simply inferences drawn from debatable evidence. He certainly would not be led to infer that some modified form of the mark theory has at the present time a much better prospect of life than the conclusions of those who reject it entirely; nor would he conjecture that so late as the year of our Lord eighteen hundred and ninety-three so thorough a scholar as Professor Vinogradoff can still state it as his belief that between the tribal and the manorial system there existed a distinct transitional form, which was distinguished from the tribe by its territorial basis, from the manor by the freedom of its members, and from both by the extent of its self-government. What I want to say is, that in a review of the discussion these opinions should have been given an honorable place, and should not have been brushed aside as if they were the opinions of ignorant and misguided men. Mr. Bryan's year of study hardly qualifies him for the position of critic.

It is not necessary to enter into a detailed examination of the book; it offers nothing new except the criticisms upon the mark in America and the mark in economic discussion. As to the first of these points, the theories there controverted have long since gone by default and it hardly seems necessary to revive them; as to the second point, Mr. Bryan has a very exaggerated idea of the importance of the mark theory in practical economics and present politics.

One matter I should like to discuss briefly, as its importance extends much beyond Mr. Bryan's book. It is the prominence given to what is called the "curve" of social evolution (pp. 75, 106–108). When once the idea of such a mathematically accurate curve, "sweeping backward through the slowly changing system of culti-

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vation to its beginnings," takes possession of the mind, it is difficult to avoid the manipulation of historical facts in its favor, instead of conforming the direction of social advance to the facts. It is possible to modify one of Mr. Bryan's own statements as an argument against him and to say that "if one approaches the evidence with this *direction* in his mind, he is apt to find the *direction* in the evidence" (page 22). Throughout the whole of the second and third chapters Mr. Bryan is mastered by this positivist idea, and he seems to be a follower of Condorcet and Comte without knowing it; for his line of progress is destined to lead to human perfectibility if long enough persisted in. Mr. Bryan does not see that it is possible for just as true a social evolution to take place under a theory other than that which he has adopted. He does not see that while the apparent direction of social evolution is represented by a broken line which sometimes rises and sometimes falls, the real direction is continuously forward. It is impossible for the apparent advance of social progress to be one of unchanging improvement. Economic history is showing that society, through the introduction of new economic factors at certain stages in its history, has passed through periods and crises in which the condition of the mass of the people was worse than before. The transition from tribal to political life, with land as the new economic factor; from self-sufficient to profit-gaining economy; from the open-field system to enclosures and rotation of crops; from hand-labor to machinery, — was in each case a crisis and led to the deflection of the apparent line of progress and to disastrous consequences for masses of the population. Yet no one will say that the real direction was not toward a better social order and a truer freedom.

These considerations seem to me to reveal the underlying fallacy in Mr. Bryan's reasoning. That the facts are against him is clear enough. Professor Vinogradoff shows plainly that thirteenth century conditions were worse than those of the eleventh century. Every one knows that thousands of artisans were discharged as machinery was introduced into manufactures, and that the distress of the wage-earners in the beginning of this century was greater than in the century before. I affirm that the same was true of the transition from tribal to political life: the apparent change as seen in manorial serfdom was for the worse; the real change, the passing to a higher form of social and political order, was for the better.

Bryn Mawr College. Charles M. Andrews.

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Abnormal Man. Being Essays on Education and Crime and Related Subjects, with Digests of Literature and a Bibliography. By ARTHUR MACDONALD. Washington, Government Printing Office, 1893. — 445 pp.

This book is evidence of the important position that the scientific study of criminals has assumed, and its publication under the auspices of the national bureau of education is in itself worthy of comment. There is evidently a recognition by the government that the usefulness of its trained staff of assistants can be extended beyond the limits of seed distribution and the collection of population statistics.

People are slowly becoming aware that the proper treatment of the delinquent classes is of the gravest importance, and intimately connected with the welfare of society in general. They begin to see that crime is less an excrescence than an organic disorder, in the treatment of which, while local applications are useful and even indispensable and the scalpel and lancet must often be used, still the main reliance is to be placed on those remedies which affect the organization as a whole — which, restoring the general health, increase the power to reject and resist deleterious influences. The grave dimensions of the problem are bringing its consideration more and more into the foreground, and everywhere at the present day we see scientists resolutely grappling with the difficulties which it involves. However, it must be conceded that the investigations in this domain have been more actively carried on in Europe, and especially on the continent, than in our own land, and hence Mr. MacDonald does the cause of the American study of criminology a great service in presenting the most advanced European views, with a very brief statement of the contents of the various books on the subject.

Mr. MacDonald is well known as a writer who has given to the subjects treated in the book under review his close and earnest study for many years. He apparently is an advocate of the extension of the laboratory method to the study of history, political economy and indeed all manifestations of human will and activity. But he does not devote much space in this book to his own views. His object is rather to make a careful study of the works of others, and, by a very brief summing up, to present the dominant ideas found therein, and to define clearly each author's position. This *catalogue raisonné* is accordingly of great service to the student. At

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times, however, in the author's laudable attempt to present in the tersest form the arguments of extensive works, he has sacrificed clearness to condensation. This happily occurs seldom, less frequently than experience has taught us to expect in a digest.

The bibliography, more than two hundred pages in length, has the great merit of being almost a complete list of books and articles on sociological subjects, — criminology, suicide, pauperism, insanity and genius, *etc.*, — with a brief discussion of each subject. Even the retention in the list of many articles of ephemeral value — superficial newspaper treatment of matters which belong to the exclusive sphere of the specialist — serves at least to show the amount of popular interest existing, and the extent to which the specialist's teachings, by influencing the lay mind, have borne fruit.

S. H. SCHWARZ.

Grundzüge einer Socialpädagogik und Socialpolitik. By PROFESSOR DR. KARL FISCHER. Eisenach, M. Wilckens, 1892. — 429 pp.

The chief aim of Professor Fischer in this work is not so much of a theoretical as of a practical nature, namely, to show how we can emerge from the present state of social war into the state of social peace. The "war" is that between the Social Democrats and the rest of the German people. Naturally, for the author, the "enemy" is the Social-Democratic Party. Professor Fischer does not believe that, if their teachings are refuted, the party itself will be annihilated. Therefore, he does not enlarge upon theories, but sets himself a more practical task. From a rapid survey of the writings of the leading Social Democrats he gathers that they have declared war on the monarchic state, on society and on the church, and that they teach republicanism, socialism and atheism. Accordingly, he proceeds to examine these positions.

First, does political science teach republicanism? To settle this question Professor Fischer glances over both ancient and modern history. Observing that the Orient and Egypt know nothing but monarchy, and that in the history of Europe monarchy predominates by far; and observing further that the great majority of thinkers have expressed themselves in favor of the monarchic principle: he concludes that science is against republicanism.

Secondly, does economic science teach socialism? Under this head the author deals with Adam Smith, Ricardo and Marx as

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forming a school of political economy by themselves. He does not think much of them. The whole doctrine of Smith, based on the principle of self-interest, evidently exhibits "a gross ignorance of man and the world" (page 25). Ricardo rendered the teachings of his master only "more pointed" (page 26). Marx's labor theory of value is equally erroneous. On the whole Professor Fischer makes short work of their teachings, all the more easily because he is often able to refer the reader to such eminent authorities as Julius Wolff, Cathrein and Hamman. The chapter concludes with the assertion that economics does not teach socialism.

Third, does science teach atheism? The author's conviction is strongly for the negative, but he advances no new arguments.

Having succeeded to his satisfaction in proving the error of the Social Democrats, he nevertheless admits that they are justified in their discontent with existing conditions. How this deplorable state came about is the subject of the second book, in which is given a historical sketch of the social conditions in England, France and Germany during the last two centuries. Professor Fischer is a great admirer of Carlyle, and sympathizes with the professorial socialists. The third and fourth books give a general description of the German political parties and the social-economic condition, which are painted in rather dark colors.

How to evolve industrial peace from the present chaos is the great problem to which our author addresses himself in the last two books, which treat of the "social pedagogy and social policy" proper. But all the wisdom of Professor Fischer does not contain a single new thought — does not devise a single new measure. On the one hand he proposes self-discipline, and on the other hand he endorses most of the recent measures of the German government.

The work to be done for the benefit of the "fatherland" is classified as social work of peace (1) in house and family, (2) in church and school, (3) in the army, state and society, and (4) in science and art. The first involves the inculcation of all the virtues at home; the second is made to embody a rather absurd suggestion of the spiritual guidance of the people through sets of twenty "housefathers," and a line of activity in the schools corresponding to requirement of the emperor's decree of May 1, 1889:

> The school should strive to bring to youth the conviction that the teachings of the social democracy are not only contrary to the commandments of God and Christian morality, but also incapable of realization and equally fatal to the individual and to society.

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The army's social work is found in its importance as a factor of discipline and moral culture. As regards the social work of peace in state and society, the existing division of classes should be maintained; a special law of inheritance for the landowners (providing for the entail of the whole estate to one heir) should be made, while for the capitalists the present laws will do; the army-budget must be kept up; the existing corn-laws must remain unaltered; the capitalists on one side and the workingmen on the other side should be organized into unions for the sake of regulating their mutual relations, *etc.*, *etc.* Finally, science and art should above all be made to serve the welfare of man.

Such are the author's sapient suggestions as to the social training and the social policy which are successfully to combat social-democracy in Germany, and lead the country on to a normal state of peace.

P. FIREMAN.

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Le Droit des Femmes et le Mariage. Par LOUIS BRIDEL. Paris, Félix Alcan, 1893. — 167 pp.

In this little treatise M. Bridel has written an excellent résumé of woman's condition before the law in all the countries of Europe and in the United States. The book is divided into five parts, treating in order of the educational, economic, political, marital and civil rights of woman. There is some confusion of the last two topics, the subject in one being much the same as in the other, and not much space is given to woman's educational rights. The distinction also between political and civil rights might reasonably be modified. The chapters dealing with these various subjects are confined to a clear and careful statement of the facts regarding the growth and present condition of the law in regard to the rights of woman. Not the least suggestive and interesting is the connection which the author points out between the social and religious condition of different countries and the extent to which woman's equality with man is recognized.

As a clear and succinct account of the subject the volume can be very well recommended. It does not show on its surface the amount of work required to produce it, but this must have been very great. The only defect which the student would charge to the book is its failure to outline the moral and economic principles upon which the existing condition of woman is based. This, however, would be a

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doubtful criticism, desirable as such a feature would be, inasmuch as this task did not regularly fall within a comparative examination of the facts. But students will not often find a book that will give so good a bird's-eye view of the whole subject.

J. H. HYSLOP.

COLUMBIA COLLEGE.

Die Bestellung der Privaten Beleuchtungsgesellschaften zu Stadt und Staat. Von Dr. JOHN HENRY GRAY. Jena, Gustav Fischer, 1893. — 167 pp.

In this monograph, which appears as the fourth number in the eighth volume of the publications of the *Staatswissenschaftlichen Seminar* at Halle, Professor Gray, now of the Northwestern University, has given us an excellent account of the experience of Vienna and Paris under the private ownership of their gas works. He shows that the Vienna company received its franchise without sufficient provision for public control, and that in consequence great discontent has existed, so that municipal ownership seems almost certain to follow the expiration of the present franchise in 1899.

In Paris, the present company entered in 1855 upon a fifty-year contract, which has secured to the city an advantage over most other cities that have private ownership. In addition to a tax of about eleven cents per thousand feet, and a fixed tax of $40,000 a year, the city receives one-half of the excess of profit over fourteen per cent. These items of revenue to the city amount, according to Professor Gray, to about seven centimes per kubikmeter, or about forty cents per thousand feet. The price of gas to private consumers during the fifty years is about $1.70 per thousand, and to the city one-half as much. The average price of the two, in view of the relative amounts sold in 1891, is about $1.42. Deducting the forty cents tax, the net cost to the consumer, or the community, is $1.02, as against from $0.62 to $0.77 in different parts of London.

The capital stock since 1870 has been limited to 84,000,000 francs, of which 30,000,000 have been practically canceled by a yearly reserve set apart for the purpose, in preparation for city appropriation of the works in 1905, soon to be noticed. The bonded indebtedness appears to be 232,400,000 francs. The total present capitalization is therefore 286,400,000 francs, or about $5.17 per thousand feet of the gas used in 1891. This capitalization might be less, if the company were not obliged, in every asphalt-paved street and in every other street over forty-six feet wide, to lay two sets of mains,

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one on each side of the street, — a requirement almost unknown in America. As Professor Gray implies that the bonds pay five per cent interest and are allowed to be sold at par to the stockholders in the same unwise manner, as far as the public are concerned, as in America, though they could be floated at three to three and one-half per cent, the interest charge must be about 11,620,000 francs, while the dividend charge of about forty-five per cent is 23,500,000 francs. This gives a total charge of $7,024,000, which is 63.94 cents per thousand feet. This, deducted from the net price of $1.02, leaves the cost of manufacture and distribution, including repairs and reserve fund, at forty-four cents. Permanent improvements apparently are paid for out of bond issues. If the bonds were sold on the market at par at three and one-half per cent, as Professor Gray says they could be, the net profit on the stock would be increased from forty-five per cent to fifty-one and four-tenths per cent. If the company were content with eleven and four-tenths per cent profit, and there were no taxes, the price might be reduced to sixty-three cents.

The redeeming feature in this contract is that in 1905 the city comes into possession, free of charge, of all the street mains and services, or probably one-half the entire value of the system, and is to have all the rest of the system at a price to be fixed by disinterested experts. Of course, no franchise or monopoly value will be paid for.

Professor Gray condemns this contract for not vesting in some public commission the power to reduce prices as circumstances warrant. He argues strongly and justly that a city should compel a reduction of price, instead of trying to derive revenue from either a public or private company. He also claims that the cheapness of gas manufacture in Paris is due to the freedom from "raids" and attacks by rival companies and to the length of the contract. Undoubtedly, these causes are important. Yet the cost of gas in Boston in 1892, manufactured by the Bay State Gas Company, and distributed by the Boston Gas Company, amounted, according to the report of the Massachusetts Gas Commission of January, 1893, to only $0.604 per thousand feet, — an excess over the forty-four cents in Paris which is partly accounted for by the greater cost of labor and probably of materials, and the smaller out-put in Boston.

The author, while admitting that municipal ownership may ultimately be found desirable for our cities, claims that a far better immediate remedy for the evils of our present system has been

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found in the commission idea. The benefits of the Massachusetts Gas Commission in gathering information may become very great; but until their last report, they had not given the public the benefit, in their published statements, of what they had found as to the cost of gas manufacture, and even in their last report they do not give the items of cost; nor have they ever given facts as to the cost of duplication of the various Massachusetts gas works or the cost of recently constructed new works. They admit in recent testimony before a committee of the Massachusetts legislature that the returns of the companies as to cost of plant and capitalization are accepted without investigation. Very few reductions in price have been made by the commission, despite many facts leading to a belief that, at present prices, the profits are abnormally high on the cost of duplicating the gas plants of the large cities of Massachusetts. These, and other facts that might be given, such as the growing demand for municipal ownership of lighting plants, show that there are grounds for less confidence than that felt by the author in the remedial virtues of the commission idea. A commission, however, if honest, able and fearless, is undoubtedly a great advance over our present frightful chaos, weakness and corruption in the relation of our cities to their lighting plants.

Professor Gray criticises the statistics of municipal gas works in the writings of the present reviewer as unreliable, but adduces only two reasons for the charge: first, that the fiscal year in the various cities treated begins at different times; and second, that my tables show considerable variations in the price of materials and the consumption of gas at different times of the year. How these conditions, true in all gas companies, make one "lose confidence in the next thirteen tables" of statistical information in the work referred to, is not stated. Again, the author says, on page 159, that it needs only a "glance" at my writings to show that independence of politics has not been reached in cities possessing their own works. As a matter of fact it was carefully shown that in gas manufacture and distribution politics seems to figure in no way whatever in the ten cities owning their gas works, except to a rapidly diminishing extent in Wheeling and Philadelphia. Professor Gray is, however, quite right in saying that there is no uniform system of book-keeping in either our public or private gas companies, and no reliable statistics as to the latter in this country.

In furnishing valuable information on so many points and challenging discussion on others, Professor Gray has made a real contribution to the subject of his monograph.

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The Influence of Sea Power upon History. 1660–1783. By Captain A. T. MAHAN, U.S.N. Boston, Little, Brown & Co., 1893. — vi, 557 pp.

The Influence of Sea Power upon the French Revolution and Empire. 1793–1812. By Captain A. T. MAHAN, U.S.N. Two volumes. Boston, Little, Brown & Co., 1893. — vi, 380, 428 pp.

Captain Mahan has done more than write a new book upon naval history. He has even done more than write the best book that has ever been written upon naval history, though he has done this likewise; for he has written a book which, to use a somewhat objectionable phrase, may be regarded as founding a new school of naval historical writing. Now that the egg has been made to stand on its end, of course we are all astounded that nobody ever thought of making it do so before. It seems almost incredible, when we think of the immense part played by naval power in history, that no historian should ever yet have treated it at length from the philosophic standpoint; yet this is literally the case. There have been innumerable books that were mere annals of naval warfare, and there have been a few excellent histories dealing with naval strategy and tactics, or detailing the actual deeds accomplished by the fleets of some given power or in some given war or series of wars; but until Captain Mahan in these two books revolutionized the study of naval history, no one had attempted to show exactly how naval power made itself felt in the struggles between the different races and nationalities of mankind, nor exactly how far-reaching its influence had been and was likely to be upon the destinies of the great master races. This Captain Mahan has done and has done admirably. His books are not only remarkable because of the philosophic standpoint from which they are written, because of his grasp of the subject and his familiarity with all the facts bearing upon it, great and small; but they are remarkable also for the beauty of their style and for the skill with which he has subordinated the lesser to the main points of interest. While showing his thorough acquaintance with detail, he has never for a moment permitted that detail to absorb more than its proper amount of attention. His books possess to an eminent degree that virtue which so few histories do possess, but which all great histories must possess, the quality of being readable.

At the outset of his first volume Captain Mahan gives a good proof of the way in which he grasps the salient features of any case.

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This is where he deals with the effect of the Roman sea power upon the second Punic War. For over two thousand years the campaigns of Hannibal have proved one of the most attractive themes to historians of every kind; yet few writers have given proper weight to what was undoubtedly the chief cause of their failure — that is, to the fact that the Romans possessed control of the seas. Both Hannibal and the armies that reinforced him were obliged to march in long circuits overland at the cost of frightful losses, before they could come into contact with their foe in his own home, while this foe was able to harass the Carthaginians and their home dependencies at will, and to prevent any important assistance coming to Hannibal direct from Africa or from the friendly Macedonian king, — and all merely because the Carthaginian navies were no longer able to stand up in fair fight against the Roman.

In his first volume Captain Mahan covers a little over a century of warfare, beginning with the final wars waged by Tromp and De Ruyter against the English, and ending with the struggle of the American Revolution. He paints on a large scale, dealing not with single ship actions, but with the grand strategy of the war, and with the great battles between opposing fleets. He shows conclusively what many historians have felt, but what few have been able to point out clearly, the enormous influence during this century of the naval supremacy of England upon the course of history. Without this supremacy the continents of North America and Australia would now be peopled by a mixture of various white races, speaking many different tongues, instead of by the great English-speaking peoples; while India and South Africa, if under white rule at all, would be under the rule of whites who would not speak English.

One of the strongest features of Mahan's book is the way in which he shows that mere commerce-destroying is not of decisive weight in the result of a great war. It is a valuable adjunct to other operations, but it is only an adjunct. It may greatly irritate and annoy an enemy, but it can only seriously cripple him if the commerce-destroying is carried on with the help of great fighting fleets. This is a lesson that we in America especially need to learn. We are very apt to think that all we need to do, as far as our fleet is concerned, is to build fast cruisers to harass an enemy's merchantmen; whereas we need to have the lesson taught again and again, and yet again, that we must have a great fighting navy, in order to hold our proper position among the nations of the earth and to do the work to which our destiny points. If we decline

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to be taught this lesson by the hundred examples given in Captain Mahan's book, we should nevertheless learn it from our civil war. The Alabama and the other Confederate privateers caused great annoyance to the North, but did not in any appreciable manner diminish its power for offensive or defensive warfare, or dishearten its people; whereas the fighting fleets of the Union, by their strict blockade of the Southern coasts and by their feats of arms in the South Atlantic, the Gulf and the Mississippi, played an enormous part in bringing about the final overthrow of the Confederacy.

Captain Mahan's second work is in some ways even more interesting than his first. He has not, of course, the chance to develop a new idea of first-rate importance, for this idea has already been developed in his first volume, and it only remains for him to elaborate and make it more clear; but he deals with the most striking portion of all naval history, with the campaigns of that greatest of all sea captains, Admiral Lord Nelson.

Captain Mahan's volumes are already accepted as the standard authorities of their kind, not only here, but in England and in Europe generally. It should be a matter of pride to all Americans that an officer of our own navy should have written such books.

WASHINGTON, D.C. THEODORE ROOSEVELT.

Darwin and Hegel, with other Philosophical Studies. By DAVID G. RITCHIE, A.M. London, Swan Sonnenschein & Co.; New York, Macmillan & Co., 1893. — xv, 285 pp.

It is the "other philosophical essays" that bring this book within the field of the POLITICAL SCIENCE QUARTERLY. The last five essays bear the titles: "What are Economic Laws?" "Locke's Theory of Property," "Contributions to the History of the Social Contract Theory," "On the Conception of Sovereignty," "The Rights of Minorities." There is a logical sequence uniting these with the first four essays, which are metaphysical. There is the consistency of a philosophical central idea, and the title of the second essay, which is the title of the book, indicates with sufficient emphasis what the author's point of view is. We must, then, take the entire book in order rightly to take that which belongs to us *prima facie*. "These papers are to be taken as a whole. Statements in one essay must be understood as qualifying those in another."

It is really to be hoped that the author will be disappointed in the fear, expressed in his second essay, that "Darwinians and

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Hegelians will both look on me as a heretic." There surely would be little cause for hostility to a middleman. "Hegel grew up in an intellectual atmosphere in which the conception of evolution, and especially of biological evolution, was no inconsiderable element." The result is that Hegel is evolution metaphysically put. This remark is not at variance with Mr. Ritchie's saying: "Of the two — evolution and emanation — Hegel prefers the conception of emanation." All intellectualistic metaphysics consists in turning common sense end foremost with as little dislocation of the members of the series as is possible in the process. A German humorist was invited by the devil to look through the devil's telescope. The instrument being inverted, the devil invited the humorist to look again. There was instruction both ways. The differences between systems of intellectualistic metaphysics depend on three factors: First, science is common sense clarified; at what stage of clarification did the end-for-end turning take place? Second, among different contemporaries different ends are prominent; which particular end is turned foremost? Third, not all metaphysicians are equally deft; did the master dislocate things much or little, and what is his process of resetting? The first two questions, in respect to Hegel, have been answered. As to the third, the dialectic process is simply the metaphysics for Spencer's integration and differentiation. For a generation to whom Darwinism is the dominant working hypothesis, Hegelianism is the fittest metaphysics. Mr. Ritchie has done well in recognizing the relation. He has done better in preserving a large core of Kantian Criticism in his Hegelianism. "And this Idealist Evolutionism (if a label is necessary) seems to me to give the best starting point for an examination of the concrete problems of ethics and politics." The truth is, Mr. Ritchie's angle of vision, corrected by modern metaphysics and science, places him, though he nowhere says or even hints so, just about at the point of the Aristotelian entelechy. He occupies emphatically the best starting point for his purpose.

Lest non-metaphysical readers may be frightened away from the perusal of Mr. Ritchie's book, it is proper to observe, as all sensible men have the same religion, which no sensible man ever states, so all sensible men have the same metaphysics, which no sensible man obtrudes when dealing with "the concrete problems of ethics and politics"; and Mr. Ritchie is a sensible man. The last five essays can be read without thinking of metaphysics, as you can read the *Faerie Queene* without troubling yourself about the allegory. By the

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time you reach the last essay you have forgotten that Mr. Ritchie has ideas on metaphysics, and so, apparently, has the sensible author.

The best specimen of Mr. Ritchie's historical method is the "Contributions to the History of the Social Contract Theory." Important points are not touched upon; for instance, the influence of the Genevese theocracy. But to one familiar with the sources, the essay reads like *Stephen's Digest* after wading through *Greenleaf On Evidence*. There is no supersedure, but the effect is bracing. To one about to enter on this line of inquiry, the "Contributions" will serve the purposes of an excellent introductory summary, quite as much on account of what they do not, as of what they do contain.

Least satisfactory to an American reader is the essay on the "Rights of Minorities." The evolution of democracy has gone several steps farther in America than in England. The connotation of the title prefixed to the essay is different in the two countries. In English politics it may be worth while to mention that "past government has generally meant the rule of minorities," and that "the claims of a minority to consideration may be merely a survival of claims to exclusive privilege." To an American taking into consideration "concrete problems of politics," all that is as dead as the Saxon Heptarchy. Especially archaic, from the American point of view, is the restriction of the definition of persecution to "the forcible suppression of *opinions*." The italics are the author's own. This view has not even the poor merit of self-consistency. For, according to Mr. Ritchie,

> it is utterly untrue to say that we are not responsible for our opinions. That was a bad argument used for a good purpose. Opinions are not trivial matters. What is quietly thought and talked about now will affect what is done very soon.

A pretty large concession. The Inquisition would ask no more. Possibly, however, it is wrong to call the view archaic, though Mr. Ritchie stands just where Kant and Spinoza stood. Perhaps it is merely the view of the scholar. It makes a difference whose ox is gored. To a scholar, the forcible suppression of his views would be persecution; to a Hampden, the exaction of ship-money.

Mr. Ritchie's position on the rights of minorities is not mended by quoting Professor Bryce's

> important distinction between the tyranny of the majority and the fatalism of the multitude, which is so often wrongly described as the tyranny of the majority. . . . The apathy of minorities is one of the frequent weaknesses

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in democratic communities. As Professor Bryce has put it, the belief in the rights of the majority lies very near to the belief that the majority must be right.

Now, the question is precisely whether the legal recognition of the right of minorities to proportionate representation would not disestablish this superstition and do away with the weakness. Mr. Ritchie never suspects the existence of this phase of the question. That is the fatal weakness of his paper.

One praise can be bestowed unqualifiedly on the whole book. It has the first quality of all reading matter: it is readable.

WM. J. ECKOFF.

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BOOK NOTES.

THE translation of Rousseau's *Contrat Social* by Rose M. Harrington (Putnams, 1893) is not likely to become a standard rendering from either the literary or the philosophical point of view. The French is followed too closely for graceful English, and the translator's acquaintance with political theory is at times quite unequal to the task of catching her author's precise meaning. For example: Rousseau's profound conclusion that the sovereign (the general will) is never wrong can hardly be detected in this: "The sovereign by the fact alone that it is is always what it must be" (*ce qu'il doit être*). Again, the characteristically clever passage in which Rousseau demonstrates the inalienability of sovereignty is made hopelessly feeble by the use of the verb "desire" instead of "will": "The sovereign may say, 'I desire now what such a man desires,' . . . but he cannot say, 'What this man will desire to-morrow I shall still desire.'" The translation contains rather too many such faults to be useful to the careful reader. Professor Walter's introduction and notes are slight but sound.

The most useful part of Joyce's *Short History of Ireland* (Longmans, 1893) is that dealing with the manners, customs and institutions of the ancient Irish. In this is given a faithful and concise summary of the knowledge on these points which has been extracted by recent scientific investigators from a chaos of undigested material. Incidentally the author aids readers who are uninitiated into the mysteries of Hibernian linguistics, by indicating the pronunciation of the old Celtic words. But no light is thrown on the origin or general principles of that system of transliteration which paralyzes the reasoning powers with such results as these: *Biatad*, pronounced "beeha"; *faithche*, pronounced "faha"; *seanchaidhe*, pronounced "shanachy"; *side*, pronounced "shee." The narrative part of Dr. Joyce's work, which is brought from the earliest times to the end of Elizabeth's reign, exhibits no characteristics that distinguish it from the better class of books dealing with the matter on a like scale. It is sufficiently impartial as between the English and the Irish, but it hardly glows with the light of historical or political philosophy.

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In a useful little compilation, *Industrial Arbitration and Conciliation* (Putnams, 1893), Mrs. Josephine Shaw Lowell has brought together an account of some recent experiments to promote industrial peace. In addition to reprints from familiar works of Crompton and Watson, the book contains a description of the Belgian troubles and of a number of recent occurrences in various parts of the United States. The record of the American attempts, which occupies almost one half of the book, will serve to supplement the accounts given by Mr. Joseph D. Weeks in his book on *Labor Differences*.

Mr. Grover Pease Osborne has written a book with a suggestive sub-title: *Principles of Economics, the Satisfaction of Human Wants in so far as their Satisfaction depends on Material Resources* (Cincinnati, Robert Clarke & Co., 1893). It is a temperate and well-constructed volume, which shows an acquaintance with the main principles of the science. The author has rearranged, without greatly modifying, the general outlines as sketched by the classical economists. He does not profess to dig deeper, and the reader who expects to find a profound psychology of human desires will be disappointed. But the book puts in a clear and elementary way some results of recent thought. In most cases only the slightest sketch of the subject is given and the writer occasionally lapses into errors, as *e.g.* the labor theory of property and the unproductiveness of speculation.

A few years ago the late Elizabeth Lamond wrote an article on the celebrated economic tract, *A Discourse of the Common Weal of this Realm of England*, printed in 1581. It had commonly been attributed to W. S. (William Stafford), and, perhaps because of these initials, had been reprinted in a small edition by the new Shakespeare Society. Miss Lamond collected a mass of evidence tending to show that the work was written by John Hales, several decades previously. She worked for several years on a new edition based on the Lambarde MS., but died before its completion. Professor Cunningham has now edited the work (Cambridge, University Press, 1893) from her manuscript. It contains, in addition to the carefully collated text, an introduction discussing the whole subject of the authorship, and giving some interesting details as to the enclosures and the dearth of the sixteenth century. Almost a third of the volume is taken up with scholarly notes to the text. In its present form it will be an invaluable aid to the economic historian.

Almost up to the very day of his death, the distinguished French economist, Henri Baudrillart, amid a mass of other duties, continued his travels and investigations among the rural communes of his

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native country. The third volume of his remarkable study, *Les Populations Agricoles de la France* (Paris, Guillaumin, 1893), has just been edited by his son Alfred, and is wholly devoted to the southern departments. It is marked by the same scrupulous exactitude of fact and limpidity of style that immediately won so favorable a reception for his earlier volumes. Although primarily an economic history, it contains many details of interest to a wider circle of students of general social development.

Several months ago attention was called (POLITICAL SCIENCE QUARTERLY, VIII, 355) to the work by Professor Cossa on the theory and history of economics. The promised English translation, by Louis Dyer, of Balliol College, has recently appeared under the title, *An Introduction to the Study of Political Economy* (Macmillan, 1893). The translator has compiled an index of subjects, has enlarged the index of authors and has added a list of sources. In its present shape the book is undoubtedly the best history of political economy in the English language.

Macmillan has also brought out another translation for which the American student has long been impatiently waiting. It is the important work on *Natural Value*, by Professor Friedrich von Wieser, of the University of Prague, which was reviewed in this QUARTERLY shortly after its appearance in 1888 (IV, 681). The translation is by Christian A. Malloch, a former pupil of Mr. William Smart. Mr. Smart himself has supervised the work, and has added an analysis and a preface, in which he succeeds in putting the whole subject in the clearest possible light. The work is bound to become an economic classic, worthy of being ranked in the same category as the admirable translations of Böhm-Bawerk.

Not satisfied with the existing compilations and encyclopædias of political economy, Mr. Kuno Frankenstein has announced a scheme of such colossal scope as to exceed by far anything hitherto attempted. He has planned, under the title of *Hand- und Lehrbuch der Staatswissenschaften, in selbstständigen Bänden*, a series of works, written so as to form a homogeneous whole, which are to include the entire field of pure and practical economics, economic administration, finance, statistics and history of economic theory. There are to be about thirty-five large volumes, each undertaken by a separate author, to appear at the rate of five or six volumes a year. What the long-suffering German public will say to this is doubtful; but we shrink from contemplating the fate of this stupendous series at the hands of the general scientific world. The first volume, however, has just

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appeared, and really deserves serious consideration. It is written by Professor Lehr of Munich, and is entitled *Grundbegriffe und Grundlagen der Volkswirthschaft* (Leipzig, C. S. Hirschfeld, 1893). It is devoted in great part to the subjects of value and price, and is interesting as an attempt to show the connection of the newer Austrian theories with the older classical conceptions. The author's views are on the whole moderate. The mathematical illustrations, in which he is an expert, are for the most part relegated to the notes. A feature of each volume in the series is to be a bibliography, written in some cases by the librarian of the Prussian statistical bureau, and in others by the editor. In the present work the bibliography covers twenty-eight large pages.

Under the direction of Professor Conrad, of Halle, Mr. Leo S. Rowe has published *Die Gemeindefinanzen von Berlin und Paris* (Jena, Fischer, 1893). It is a praiseworthy attempt to give in a wholly unprejudiced manner the actual facts of their fiscal systems, and will not be without interest to the student of American municipal finance. The monograph, we believe, will soon be made available to American readers.

Several important documents on the currency problem have recently been published by the national government. The first in order is the *Report on the International Monetary Conference* held at Brussels; the second is a reprint of the English blue-books containing the *Herschell Report on the Indian Currency*, with all the accompanying correspondence and testimony; the third is a translation of the work on *The Future of Silver*, by Süss, which was noticed in this QUARTERLY, VIII, 365 (June, 1893).

Six new essays appear in a second edition of Professor J. S. Nicholson's *Treatise on Money and Essays on Monetary Problems* (London, A. & C. Black, 1893). As in the former edition, the whole discussion turns about bimetallism, of which the author is an enthusiastic supporter. The new essays contain timely discussions of Mr. Giffen's recent attack on M. de Rothschild's proposal to the Monetary Conference and of the new Indian currency experiment. The work is written in a popular and engaging style.

It cannot be said that *The Life and Times of C. G. Memminger*, by Henry C. Capers (Richmond, Everett Waddey Co., 1893), is an ideal biography. It is ill-proportioned, diffuse and poorly written. But it will none the less be of very great interest to the student of Confederate finance. Mr. Memminger was secretary of the treasury of the Confederate States from their inception almost to

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their end, and in no work hitherto printed can there be found so many details of Confederate financial history. The Treasury had an up-hill fight, but the biography brings out prominently the fact that Congress and not Mr. Memminger was responsible for most of the financial blunders. The appendix of almost 200 pages contains among other documents the six valuable reports of the Confederate secretary.

Die Preisbewegung der Edelmetalle seit 1850, verglichen mit der anderer Metalle, by Dr. Samuel McCune Lindsay, Fellow in Political Science, University of Pennsylvania (Jena, Fischer, 1893), forms one of the collection of economic and statistical essays of Professor Conrad's seminar at the University of Halle. In it Dr. Lindsay examines with great care the statistics of prices and the method of index numbers according to different systems. He then examines the history of the production of gold and silver and the consumption of the two metals. In a second part he takes the metals iron, steel, coal, copper and lead, and examines their production, consumption and prices. In conclusion he considers the question, whether and how much prices have fallen, and the broader question of the standard of value. He decides against the practicability of the multiple standard of value proposed by Jevons and Marshall, and is inclined to think that the world will come to some international agreement for the use of both gold and silver as the standard of value. The work seems to be carried out with great thoroughness and with full use of the very latest scientific material.

Four recent numbers of the Social Science Series (Swan Sonnenschein, imported by Scribners) contain translations of works on German socialism. In *Ferdinand Lassalle as a Social Reformer*, which was originally written as a preface to the collected edition of Lassalle's writings, Mr. Edward Bernstein, formerly editor of *Der Sozial Democrat*, gives an interesting sketch of the great revolutionary leader, which differs from the host of other books on Lassalle in that it passes hastily over the well-known personal details and discusses more fully his philosophical and social writings. The preface contains a defense of Marx against some of his recent critics. The book is well translated by Eleanor Marx Aveling. Her husband, Edward Aveling, is the translator of the second work, *Socialism: Utopian and Scientific*, by Frederick Engels. This is the excerpt, familiar to all students and published, as we are told, in ten languages, from Engels's book in reply to Dr. Eugen Dühring. An appendix gives a popular account of the Marx system, without

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adverting to any of the recent opponents of the theory. The special introduction to this English edition contains a labored defense of "historical materialism," which in Dr. Engels's mind naturally leads up to socialism. While these two books are written from the radical standpoint, the other side of the question is presented in Dr. Schäffle's *The Impossibility of Social Democracy*, in which the practical objections are pointed out. As the editor, Mr. Bosanquet, however, shows in the preface, many of the arguments are dependent on the peculiarities of the German conditions. The same may be said of the author's *Theory and Policy of Labour Protection*, in which an attempt is made to vindicate Emperor William's policy as shown in the convening of the Berlin Labor Conference. The von Berlepsch bill, brought in by the German government in order to carry out the recommendations of the conference, is printed as an appendix.

Swan Sonnenschein has also published independently *Socialism: Its Growth and Outcome*, by William Morris and E. Belfort Bax (imported by Scribners). Were the book to be judged by its literary merits, it would at once take a high rank; for it is not often that one reads so beautifully written a work. The poet shines through continually. The opening pages are themselves worth the price of the book. But Mr. Morris is a poet and not an economist or historian; and, although some of his facts are true, his history suffers not so much from the *suggestio falsi* as from the *suppressio veri*. The final chapter on "Socialism Triumphant" is alive with the glow of enthusiasm. It would be a pity to apply to it the icy touch of criticism.

After many years of diligent work, Mr. Josef Stammhammer, the librarian of one of the legal clubs in Vienna, has completed his *Bibliographie des Socialismus und Communismus* (Jena, Fischer, 1893). It contains an alphabetical list of authors, as well as a classified topical index of all books and articles on the subject, from the middle ages down to the present day. So far as we have been able to control the lists, they are surprisingly complete and accurate, not only for German, but also for French, Italian, English and American works. In many cases explanatory statements are appended. The book itself is only the first installment of a stupendous undertaking, which is to comprise the bibliography of the whole social-economic literature. The compiler promises within the next few years complete bibliographies of social politics, pure economics, practical economics and the science of finance.

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The *Handbuch des Socialismus*, by Drs. Carl Stegmann and C. Hugo (Zurich, 1894), is to appear in from seven to eight parts, of which the first two (A–Ch) lie before us. The word socialism is taken in its widest sense, so as to cover such economic topics as factory laws, labor insurance, theory of population, *etc.* The chief value of the work, however, will be in the full account of practical socialistic movements, and the biographies of the socialistic leaders. Thus in these two parts we have excellent notices of the *Alliance Internationale*, of American labor parties, of the Anarchists, of the *Allgemeiner deutscher Arbeiterverein*, of the land nationalization movement, and of Christian socialism. The articles seem to be written from the moderate socialistic standpoint, anarchism and violence being denounced. Of a special value are the biographies of the often obscure heroes of socialism. No "village Hampden" is here forgot, but all the cobblers and cigar makers who have served in labor congresses, or edited socialistic papers, or written pamphlets denouncing capital, receive due notice. For college professors lecturing on the history of socialism this handbook will be a great saving of time and effort; for the history of the numberless universal, international, general and other congresses, federations, leagues, *etc.*, through which socialism has attempted to revolutionize the world, lies buried for the most part in newspapers and forgotten pamphlets, and envious Time has striven to efface the memory of the numerous Beckers, Müllers, Sorges and others who have directed the great movement.

Die Statistik und die Gesellschaftswissenschaft, by Dr. Naúm Reichesberg (Stuttgart, Enke), is a pamphlet of 111 pages, in which the author contends that the statistical method furnishes the true basis for social science. He rejects the sociological theories of Comte, Spencer, Carey and Schäffle, because they consist simply in carrying over the principles of natural science into the domain of sociology. This, however, is a false tendency, because we do not find either in society or in individuals anything which will serve as a type of social development. The author is disposed to look upon society as an agglomeration of associations serving different purposes. The individual belongs to numberless associations of such a kind. As an individual he is controlled by the social influences; as a member of society he conforms to the social type, but yet preserves his individuality by varying from it. The object of social science is to differentiate from among the mass of influences controlling the individual, those which are purely accidental (*i.e.*, individual) and those

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which are constant (*i.e.*, social). But this is precisely what statistics does in the observation of numerous instances, namely, eliminate the accidental and bring to light the constant and persistent. The book contains a sketch of the history of statistics and the whole thus forms a clear and concise treatise on statistical science and method.

The International Institute of Sociology has been founded at Paris to stimulate and organize sociological study in the hope that it may accomplish for more general inquiries what the International Statistical Institute has done for a special order of research. It consists of one hundred members and two hundred associates. The president is Sir John Lubbock, and the vice-presidents are Professor Enrico Ferri, J. Novicon, Professor Schäffle and Gabriel Tarde. M. René Worms, editor of the *Revue Internationale de Sociologie*, which will be the organ of the institute, is the secretary. A congress will be held annually.

Mr. Geo. Haven Putnam's *Authors and their Public in Ancient Times* (1894) is an introduction to his proposed history of the development of authors' control over the reproductions of their compositions. In any exact use of the word, copyright was hardly a possibility prior to the invention of printing. With that invention piracy became possible, and it seemed to be profitable. So soon, therefore, as the wrong was discovered there was an outcry for a remedy; and from that day to this more and more protection has been yielded to the author at his urgent and insistent demand, and the end is not yet. There is hardly any department of law in which the evolution can be more clearly traced or in which the course of the development is more interesting. But to the student of this development the value of Mr. Putnam's present sketch is mainly negative. We are shown here that in Greece and in Rome and in Alexandria nothing at all approaching a copyright law had ever been suggested. The complaints of authors are directed rather against the carelessness of scribes than against the greed of pirates. The Roman authors were, perhaps, in receipt of a royalty on the sale of copies of their works placed by them in the hands of the Latin equivalent of a publisher, and they did not approve of unauthorized copies of their works sent forth by other book-sellers. To the discussion of the details of the book-business in the ancient world Mr. Putnam brings a minute and exact knowledge of the customs and practices of the book-trade of our own time, both in the United States and in Great Britain; and he is thus enabled to make many apposite illustrations of the past by the present.

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